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No. 85-414 (4)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DELORES ELLIOTT,

Respondent,

HELEN M. AMBROSE,

Petitioner,

AND ALL OTHER PERSONS SIMILARLY SITUATED,

Respondents,

vs.

SPERRY RAND CORPORATION, a Delaware Corporation; THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO and LOCAL UNION NO. 2047 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENT CLASS OF ALL OTHER PERSONS SIMILARLY SITUATED IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW (FROM PETITION)

1. Whether Rule 23 (d) (2) and (e) mailed notice(s) to the plaintiff class, under all of the circumstances present, were constitutionally sufficient absent notice of fact and apprisal [*sic*] that co-counsel held appearance of or potential for conflict of interests?

Ruling below: Yes.

2. Whether plaintiff class counsel and co-counsel were adequate representative parties [*sic*] under Rule 23 (a) (4) and constitutionally sufficient representatives for plaintiff class?

Ruling below: Yes.

3. Whether the application of the rules, procedures adopted, and judgments rendered were within the proscriptions of the Rules Enabling Act §2072 (1966) and constitutionally sufficient?

Ruling below: Yes.

4. Whether final judgment order is entitled, under Rule 23 or constitutionally, to full faith and credit?

Ruling below: Yes.

LIST OF ALL PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below are those set forth in the caption of this Brief. Petitioner's caption is wrong. Petitioner's caption lists only herself and Sperry Rand Corporation as parties to this petition but, by footnote, states: "Petitioner does not intend to abandon claims as to other parties who may later claim or be deemed to be parties of interest." The caption on this Brief, submitted on behalf of the Class of All Other Persons Similarly Situated, contains the complete list of all parties affected by the Orders and Judgments of the United States District Court for the District of Minnesota from which petitioner appealed to the United States Court of Appeals for the Eighth Circuit. Although Respondents Delores Elliott; The International Brotherhood of Electrical Workers, AFL-CIO and Local Union No. 2047 of the International Brotherhood of Electrical Workers did not participate in the appeal, they were subject to the appellate Court's jurisdiction and judgment affirming the District Court. Those three respondents and the Class of All Other Persons Similarly Situated are likewise affected by these proceedings; Petitioner's caption must be changed to reflect the interests of all parties, as set forth in the caption of this document.

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Respondent, Class of All Other Persons Similarly Situated (hereinafter "Class"), respectfully prays that no writ of certiorari be issued to review the judgment and opin-

ion of the United States Court of Appeals for the Eighth Circuit, entered on these proceedings on March 11, 1985, on which rehearing was denied by Order, dated and entered, May 13, 1985.

OPINIONS AND JUDGMENTS BELOW

These proceedings were precipitated by District Court Orders and a Memorandum that were decided on May 31, 1984, set forth in Class' Appendix G. The Eighth Circuit affirmed the District Court on May 11, 1985, Class' Appendix I, and denied Petitioner's request for rehearing on May 13, 1985, Class' Appendix J. Other Orders, Memoranda and Opinions of the District Court and the Eighth Circuit that must be considered in determining whether to issue the Writ are set forth in Respondent Class' Appendices A, B, C, D, E, F, H and K and in Petitioner's Appendix at A-24 to -62. The decisions set forth in referenced Class' appendices A, B and D are reported at 554 F.2d 868, 79 F.R.D. 580 and 680 F.2d 1225, respectively.

AUTHORITIES INVOLVED

Petitioner suggests that certain constitutional provisions, statutes and rules are involved, as set forth in her Petition. Respondent Class wishes to add that pertinent provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; the Equal Pay Act, 29 U.S.C. §206, and the Labor Management Relations Act, 29 U.S.C. §157 et seq. were also the subject of the underlying litigation. Rule 17 of this Court must be addressed, as must Rules 23, 59 and 60, applicable to the District Courts.

STATEMENT OF THE CASE

On December 9, 1974, this suit was filed by Petitioner, Respondent Elliott and Roberta Pettit (President of the Minnesota branch of the National Organization of Women), seeking relief on behalf of a class of female members of respondent unions, who were employees of respondent Sperry Rand Corporation (hereinafter "Sperry"). The Complaint alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.; the Equal Pay Act, 29 U.S.C. §206 and the Labor Management Relations Act, 29 U.S.C. §157 et seq. Petitioner herein, Respondent Elliott and Roberta Pettit sought judicial recognition of their status as class representatives. (Pettit was later dismissed as a party because she lacked standing.) Extensive discovery of the named plaintiffs and others was conducted by Sperry and the unions, in an attempt to establish, *inter alia*, that named plaintiffs did not satisfy the legal requirements of class representative status.

On May 27, 1976, Judge Larson conditionally certified the class, rejecting all arguments that named plaintiffs Ambrose and Elliott were not adequate class representatives despite or rather, because of, their long history of adversarial activities with respondent-defendants herein. Judge Larson's Order is set forth in Petitioner's Appendix at A-24 to -62. Sperry then sought a writ of mandamus from the Eighth Circuit, which was denied. *Sperry Rand Corporation v. Larson*, 544 F.2d 868 (8th Cir. 1977) (reprinted in Class' Appendix A).

On July 12, 1978, Judge Larson modified his May 27, 1976 Order by redefining the class. *Elliott v. Sperry Rand Corporation*, 79 F.R.D. 580 (D. Minn. 1978) (reprinted in Class' Appendix B).

Extensive discovery on the merits preceded trial, which commenced on September 8, 1980. Plaintiffs rested on October 21, 1980. Although there were settlement discussions that took place after plaintiffs rested and discovery depositions of Sperry's experts were taken, settlement discussions did not begin in earnest until after defendants' Rule 41 (b) Motions were denied from the bench, on December 12, 1980. At that time, Judge Larson made unconditional his July 12, 1978 ruling regarding the class representatives and found class counsel to have been competent, as required by the Federal Rules of Civil Procedure.

On May 20, 1981, counsel for the various parties signed a settlement agreement although the named plaintiffs indicated they objected to the terms of settlement and had hired separate counsel. The objections of named plaintiffs and certain class members were rejected in Judge Larson's Order of August 11, 1982, set forth in Class' Appendix C, approving the settlement.

Petitioner's Statement of the Case identifies the two law firms that represented the class. Shortly after entry of the above Order approving the settlement, the named plaintiffs filed ethics violation charges against the individual lawyers of the two law firms that represented the Class. At about the same time, named plaintiffs filed an appeal from the Order approving the settlement.

Petitioner's brief correctly states that all such ethics charges were dismissed and the case closed, on or before December 2, 1981. On June 23, 1982, the Eighth Circuit, per curiam, affirmed Judge Larson's Order approving settlement, but ordered payment of named plaintiffs' attorneys out of the settlement funds designated for payment of attorneys. *Elliott v. Sperry Rand Corporation*, 680 F.2d 1225 (8th Cir. 1982) (reprinted in Class' Appendix D).

The Eighth Circuit, as had Judge Larson, rejected Petitioner's arguments of inadequacy of relief, inadequacy of procedures for enforcement and violations of due process.

On August 3, 1982, Judge Larson issued an Order directing that named plaintiff's counsel be paid from the attorney's fee fund created by the settlement agreement. The opinion is set forth in Class' Appendix E.

On September 28, 1982, Judge Larson ordered the Class settlement funds to be distributed, pursuant to stipulation, signed by counsel for all parties, including Petitioner's own counsel. The Order and Stipulation are set forth in Class' Appendix E. The funds were distributed, accordingly.

In late 1983, Sperry moved the Court for an Order of dismissal of the case, upon a showing of full compliance with the Settlement Agreement. Petitioner objected and sought, once again, to set aside the settlement. Petitioner, in effect, requested a new trial. On May 31, 1984, Judge Larson issued two Orders and a Memorandum, dismissing the case as to all parties and claims on the merits and denying Petitioner's Motions to Invalidate the Settlement and to Stay Order for Judgment. These are set forth in Class' Appendix G.

On June 8, 1984, Petitioner filed an appeal but also moved once again, for a new trial and for an amended judgment.

On September 10, 1984, Judge Larson issued an Order denying Petitioner's Motion of June 8. Judge Larson treated these Motions as though they sought reconsideration of his May 31, 1984 Orders, even though Petitioner had already appealed from those Orders. This Order is set forth in Class' Appendix H.

On March 11, 1985, the Eighth Circuit affirmed the

May 31, 1984 judgment of the District Court, after a review of the entire record. The Eighth Circuit per curiam opinion is set forth in Class' Appendix I. The Eighth Circuit denied rehearing on May 13, 1985 as set forth in Class' Appendix J.

On September 9, 1985, Petitioner filed her request for a writ of certiorari. The Class opposes Petitioner's request.

SUMMARY OF ARGUMENT

The Class opposes the Petitioner's request for a writ of certiorari for all of the reasons given by the Courts below in 1) denying Petitioner's motions for a new trial and motions to set aside the settlement and 2) in dismissing the case in its entirety and on the merits. Petitioner's motions were not brought in a timely manner, as prescribed in the Rules of Civil Procedure. Finally, Petitioner cannot now seek to set aside the settlement when her own counsel, acting on her behalf, stipulated to distribution of all settlement funds.

Petitioner has not stated and indeed, could not have stated, any factual or legal basis, pursuant to this Court's Rule 17, that would suggest that this Court should exercise its discretionary powers to issue the Writ.

REASONS WHY THE WRIT SHOULD NOT BE ISSUED

All parties and the District Court recognized the strengths and weaknesses of the arguments advanced by the Class and Petitioner at trial. The compromise was a means by which every Class member, including former employees of Sperry, could be afforded some monetary

relief and by which all current employees of Sperry would be afforded equitable relief, regardless of whether each person was discriminated against, in fact.

The settlement agreement vested the District Court with absolute power to supervise the terms of the agreement and, upon proof of compliance, the Court, in its discretion, could dismiss the case upon facts presented by Sperry to the Court for its review. Upon facts presented to the Court by Petitioner, upon the argument of counsel, the District Court ordered judgment of dismissal, on May 31, 1984. Class' Appendix G. The reasons stated by the District Court in its Memorandum and by the Eighth Circuit in its per curiam affirmance of the District Court are adopted by the Class.

The Eighth Circuit has reviewed the entire record on three occasions. Two of those reviews took place after the District Court had approved the settlement. On both appeals, the Eighth Circuit could find no basis to set aside the settlement of the Class action because there was no evidence that Judge Larson had abused the exercise of his discretionary powers in applying Rule 23 of the Federal Rules of Civil Procedure.

Petitioner's attacks on Class counsel and Judge Larson are not surprising. Petitioner is now and always has been a well-intentioned, effective, genuine advocate of women's rights, union rank-and-file rights and employee rights. She has become more skilled than many lawyers in the practice of law because of her litigious activities during the last 25 years, against all respondent-defendants herein. Unfortunately, Petitioner has not attended law school or become so proficient in the practice of law as to learn the legal criteria and means of stating claims upon applica-

tion of facts. During the last ten years, it has become apparent that she believes that all who disagree with her are conspiring to deprive her and those she claims to represent of various rights, both statutory and constitutional. What Petitioner fails to recognize is that she has won on every issue that could have been won and as to that defendant, Sperry, against whom the only effective relief could have been afforded.

Petitioner and Delores Elliott, and they alone, caused massive changes in the manner in which females are hired and promoted by Respondent Sperry. The evidence presented at trial clearly showed a disparate impact on those few women who were denied promotions to certain job positions during certain years. Those job positions to which Sperry formerly applied arbitrary conditions of employment or promotion have now become positions available on a seniority basis or to those who can demonstrate compliance with validated criteria.

This case was settled by agreement of counsel and approval of the trial and appellate Courts after seven years of litigation, involving thorough and costly discovery and legal analysis. The Class was afforded the relief to which it would have been entitled had the matter been tried to a conclusion and decided in favor of the Class. To be sure, the Class had prayed for other relief in the form of equal pay for equal work which was not remedied by the settlement. Counsel for all parties and the District Court recognized, however, that the Class allegations on this issue were based not on identical job tasks but instead on a comparison of statistical information generated by a novel tool of industrial psychology known as the PAQ. Two of the job classes the class Petitioner alleged to be equal were

General Inspector (General Inspector "A"), all male, and Inspector (General Inspector "B"), all female. Dr. Raymond Mendel's expert analysis of the results of the PAQ did not show these jobs to be equal. Plaintiff Ambrose's arguments of the equivalance of Teamster-Unit Mechanical Inspectors (all male) to General Inspectors and to Inspectors, unequal job classes, is therefore unfounded. Even if the Inspector job classes were equal, there remains today a legal question of whether persons doing different job functions can be compared so as to state a claim for which relief can be granted under either Title VII or the Equal Pay Act.

Class counsel Bland, by his Affidavit submitted to the District Court, has denied any recollection of discussions with Jennie Hodder involving the Teamsters-Unit Mechanical Inspectors until trial. Even if there had been such conversations in 1976, the time period of filing charges against the Teamsters Local and International and Sperry may have expired. The Class had been or was about to be certified. No Class member had standing to make any allegations against the Teamsters or against Sperry in this regard. If one Union (the Teamsters), had bargained more skillfully than another, (the IBEW), thereby obtaining higher pay for its members, the difference in pay did not constitute sex discrimination by Sperry against female members of the IBEW unit. Analysis of information generated by the costly and exhaustive manual and computer analysis of the applicant flow data did not demonstrate that Sperry deprived any female members of the Class of the opportunity to apply for work in the Teamster bargaining unit.

The District Court supervised this case for more than

nine years. In the six weeks of trial it received hundreds of exhibits and listened to thousands of pages of testimony. The Court had designated Class counsel upon certification and, when plaintiffs rested their case, found class counsel to have been competent and vigorous representatives of the interests of the Class. None of the arguments raised by plaintiff Ambrose in support of her Motions to set aside the settlement is related to the facts discovered or presented to the District Court, the Eighth Circuit or to this Court. Instead, Ambrose's arguments are a continuation of her incessant attacks upon Local 2047 and the International, alleging less than adequate representation of the membership. This was never a Union representation case nor could it have been. There is nothing to prevent Ambrose and those who share her views from taking further steps, including litigation, in the crusade against the Unions. Furthermore, if Ambrose believes that Sperry continues to discriminate illegally, there is nothing to prevent her from filing discrimination charges with the appropriate administrative agencies or commencing litigation against the appropriate parties, seeking relief according to recognized legal theories.

The issues raised by Ambrose that were most recently reviewed by the lower Courts had been previously addressed by the District Court, in 1981, and the Eighth Circuit, in 1982, in their approval of the settlement and by the Ethics Committee in 1981. Ambrose brought her Motion to Invalidate and Stay pursuant to Federal Rules of Civil Procedure 59 and 60.

On the present record, Ambrose's citation of Rule 59 can be read only as a request for a new trial. Rule 59 (a) (2) states that such a Motion must be based on principles

of law pronounced by Courts of equity prior to the adoption of the rules of civil procedure. The only support for the Ambrose Motion is the alleged conflict of interest. Named plaintiffs did not urge the District Court (at the time of the fairness hearing in 1981) or the Eighth Circuit (on the appeal from the fairness hearing in 1982) to set aside the settlement on the basis of any alleged conflict of interest. This was expressly recognized and so stated in the opinion of the appellate Court. *Elliott v. Sperry Rand Corp.*, 680 F.2d 1225, 1227) (8th Cir. 1982). Instead, named plaintiffs elected to charge counsel with conflicts of interest in proceedings before the Ethics Committee and the Lawyers Professional Responsibility Board. Their charges were fully investigated and dismissed as without merit by the panel having jurisdiction over these charges. A complete record of those proceedings (except for the purely internal documents to which neither the complaining parties nor responding parties have had access) was furnished to the District Court by Ambrose, and is part of the record. The District and Appellate Courts have not found any conflict of interest on the part of Class Counsel.

The Class has nothing to gain and everything to lose should the settlement be set aside and trial resumed. Petitioner has not suggested how or that different counsel for the Class would improve upon the previously approved settlement. Ambrose offers no suggestions as to how all of the funds paid to class members would be returned, should the settlement be set aside. The consequences of setting aside the settlement would be unmanageable.

Ambrose alleges no clerical mistake in any Order of the District Court. Rule 60 (b) applies only where a party moves for relief from an Order upon a showing of certain

facts. The allegations of Ambrose concerning conflict of interest were made to an appropriate forum which found the Complaint to be without merit. Ambrose should be estopped from raising such an issue again. Her failure to urge the alleged conflict of interest to the District Court and to the Eighth Circuit at the fairness hearing can also be viewed as a waiver. *Pioneer Insurance Company v. Gelt,* 558 F.2d 1303, 1311-1332 (8th Cir. 1977) (60 (b) motion must be filed within one year; "appellate court will not disturb the exercise of [trial court's] discretion in the absence of abuse"); *Chicago and North Western Railway Company v. Union Packing Company,* 527 F.2d 592 (8th Cir. 1976) (per curiam) (60 (b) motion denied because it was made more than one year after judgment). Rule 60 (b) also states that a Motion to relieve a party from an Order shall be made within a reasonable time and, with regard to certain allegations, within one year of the date of the Order. This District Court's original Order approving the settlement was entered in August of 1981. A second Order, subsequent to and in accordance with the Eighth Circuit decision approving the settlement, was entered in August of 1982. Petitioner's then attorney even stipulated to the distribution of settlement funds on September 28, 1982. More than one year passed until Petitioner brought her Rule 59 and 60 Motions in January 1984. The allegations that Ambrose is now making are also untimely. Assuming that some principles of law would have allowed the District Court to entertain Ms. Ambrose's Motion at any time, there is no justifiable reason for her not to have brought this Motion shortly after the August 1981 Order was entered and certainly not later than September 28, 1982, the date on which the District

Court ordered distribution of the settlement funds, pursuant to her own attorney's Stipulation. This Petition is therefore frivolous, not because Petitioner is seeking to harass but because, by her own actions and inaction in 1981 and 1982 and through her own counsel, Petitioner has acquiesced in and waived any rights she may have had to challenge the settlement.

This Court's Rule 17.1 (a) and (c) indicates some of the circumstances upon which a writ of certiorari might be issued. The only argument advanced by petitioner in support of her Petition appears to be that the Eighth Circuit

> has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Id. (a). There is no evidence or law to suggest that the Eighth Circuit departed from or sanctioned such a departure from the accepted and usual course of judicial proceedings for the reasons stated herein.

The Petitioner's Questions Presented were either 1) presented to the District Court and Eighth Circuit, both of which ruled adversely to Petitioner in or before 1982, other than in conjunction with this latest appeal, or 2) should have been presented to those Courts in 1981 or 1982 in conjunction with the judicial review of the settlement but were not, estopping Petitioner from raising those questions for the first time in this Court.

CONCLUSION

It is not in the best interests of the Class to set aside the settlement agreement. To do so might require the return of monies paid to the Class and, more significantly, would eradicate the significant benefits gained by women in Sperry's employ since the time the charges were filed on behalf of this Class in 1972. Those benefits were obtained because of Ambrose's actions in this litigation. Ambrose must understand, however, that Title VII is not a panacea; it circumscribes with particularity what remedies can be sought by lawyers on behalf of a class and concomitantly circumscribes the relief that can be afforded by the Court.

Plaintiff Ambrose objected to the settlement and appealed the Order approving the settlement through counsel other than Class counsel. The arguments made then in objection to the settlement are no different than those made now to set aside the settlement. There are no newly discovered facts. All arguments were made by Ambrose's counsel two years ago and decided by the District Court and the Eighth Circuit.

The Petitioner's claims against Sperry Rand Corporation and the unions have been asserted loudly and clearly since the mid-1960's. Those claims have been litigated. The remedies which she sought for the Class were awarded, where available as a matter of law or as a product of compromise. Some of the remedies afforded by the settlement were not otherwise available. The best interests of the Class have been served. Petitioner has had a profound and long-lasting impact on defendant-Respondents herein. Undoubtedly, Petitioner will continue her crusade in support of equal rights. Petitioner is to be admired for

her perseverance and sense of justice; she is the only member of the Class to reject her award.

There is a time when every contest must end; this contest must end now. The request for issuance of the Writ should be denied.

October 9, 1985.

Respectfully submitted,

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APPENDIX

Appendix A

SPERRY RAND CORPORATION,
Petitioner,

v.

Honorable Earl R. LARSON, United States District Judge for the District of Minnesota, Respondent,

and

Delores Elliott and Helen Ambrose, and all other persons similarly situated,
Respondents.

No. 76-1734.
United States Court of Appeals,
Eighth Circuit.

Submitted Oct. 12, 1976.
Decided May 9, 1977.

Before GIBSON, Chief Judge, HEANEY and WEBSTER, Circuit Judges.

WEBSTER, Circuit Judge.

Sperry Rand Corporation, a defendant in a Title VII action brought by female employees, petitions this Court for a writ of mandamus to compel decertification of class union status previously granted conditionally to plaintiffs by the District Court.[1]

The complaint seeks injunctive relief against class-based sex discrimination in employment practices. In addition,

[1]The Honorable Earl R. Larson, United States District Court for the District of Minnesota.

back pay and attorneys' fees are demanded. Also named as defendants are Local Union No. 2047 of the International Brotherhood of Electrical Workers, and the International Brotherhood of Electrical Workers, AFL-CIO.[2]

I. *Availability of Mandamus*

Petitioner did not seek interlocutory review of the class action certification under 28 U.S.C. § 1292(b). Instead, it sought relief by way of the extraordinary writ of mandamus. This was a conscious procedural choice and it severely limits the scope of our review.[3]

---

[2]This litigation began in December, 1974. In addition to their Title VII claims under 42 U.S.C. § 2000e *et seq.*, plaintiffs Delores Elliott and Helen Ambrose asserted claims for violation of the Equal Pay Act of 1963, 29 U.S.C. § 206, and the Labor Management Relations Act, 29 U.S.C. § 157 *et seq.* They sought to represent a class consisting of women who were, are, might have become, or might become members of the International Brotherhood of Electrical Workers, AFL-CIO [IBEW] and Local 2047 and who were, are, might have become, or might become employees of Univac at its St. Paul plants since July 2, 1965, and who have been, are, or might be adversely affected by the practices of which they complained.

Petitioner filed a motion asking the District Court to determine, *inter alia*, the propriety of bringing this suit as a class action. After submission of memoranda and oral argument, the District Court issued a memorandum order on May 27, 1976. It denied certification to the claims under the Equal Pay Act and Labor Management Relations Act, but conditionally certified the Title VII action for class action status under Fed.R.Civ.P. 23(b(2). It defined the class to include former, present and future female employees of Univac employed at its plants in and near St. Paul, Minnesota, who are, have been, or will be members of Local 2047 and IBEW during the period commencing July 2, 1965, and continuing to the date of trial.

[3]At oral argument, counsel for petitioner explained that this Court appeared to be inhospitable to interlocutory appeals from class action determinations. Because we do not accept that evaluation, we add these additional comments.

The impact of a class action determination on the dimensions of the trial and the exposure to liability can be enormous. *See Schmidt v. Fuller Brush Co.*, 527 F.2d 532, 535 (8th Cir. 1975). This fact of life must be balanced against general judicial policy disfavoring piecemeal litigation. *See Will v. United States*, 389 U.S. 90, 96, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967). When a close question of class action *vel non* is presented, either under the facts or under statutory construction, district courts ought to be more receptive to certifying

"The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Kerr v. United States District Court*, 426 U.S. 394, 402, 96 S.Ct. 2119, 2124, 48 L.Ed.2d 725 (1976). As we said in *In re Cessna Distributorship Antitrust Litigation*, 532 F.2d 64, 68 (8th Cir. 1976):

> The remedy of mandamus is available only in those circumstances where the district court exceeds "the sphere of its discretionary power." *Will v. United States*, 389 U.S. 90, 104, 88 S Ct. 269, 278, 19 L.Ed.2d 305, 315 (1967). *See In re Cessna Aircraft Distributorship Antitrust Litigation, supra*, 8 Cir., 518 F.2d 213 at 216; *Pfizer Inc. v. Lord*, 456 F.2d 545, 547-48 (8th Cir. 1972). *See also Weight Watchers of Philadelphia, Inc., v. Weight Watchers International, Inc.*, 455 F.2d 770, 775 (2d Cir. 1972). Mandamus is an extraordinary remedy reserved only for extraordinary situations. *Stein v. Collinson*, 499 F.2d 91, 95 (8th Cir. 1974); *Gialde v. Time, Inc.*, 480 F.2d 1295, 1302 (8th Cir. 1973).

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critical questions for interlocutory review if it fairly appears that an immediate appeal may materially advance the ultimate termination of the litigation. It is a rare case in which a class action determination will qualify as a final order appealable under the collateral order doctrine. As a result, a party aggrieved by a class action determination and denied a section 1292(b) certification is relegated to seeking mandamus. This seriously narrows the scope of appellate review at a critical stage in the litigation and casts upon the district judge the uncomfortable role of a respondent, including the task of responding unless he chooses to rely upon the attorneys for the opposing party. We think that the legitimate objectives of class action litigation can best be served by our disclaiming any hostility interlocutory certifications in situations in which the district court should reasonably conclude that "the gravity of the class action certification issue require[s] an expedited hearing by this court." *In re Cessna Aircraft Distributorship Antitrust Litigation*, 518 F.2d 213, 216 (8th Cir.), *cert. denied*, 423 U.S. 947, 96 S.Ct. 363, 46 L.Ed.2d 282 (1975), *See, e.g., Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 169-72, 94 S.Ct. 2140, 40 L.Ed. 2d 732 (1974); *LaChapelle v. Owens-Illinois, Inc.*, 513 F.2d 286 (5th Cir. 1975); *Katz v. Carte Blanche Corp.*, 496 F.2d 747 (3rd Cir.), *cert. denied*, 419 U.S. 885, 95 S Ct. 152, 42 L.Ed.2d 125 (1974); *Herbst v. International Tel. & Tel. Corp.*, 495 F.2d 1308, 1311-13 (2d Cir. 1974).

Mandamus may be appropriate to review orders granting class action designation when the issue presented is one of clear usurpation of power by the district court. Thus, in *Schmidt v. Fuller Brush Co.*, 527 F.2d 532 (8th Cir. 1975), we issued the writ where the District Court had granted Rule 23[4] class action certification in an action brought under the Fair Labor Standards Act notwithstanding the special and conflicting "opt in" requirements of that Act. *See* 29 U.S.C. § 216(b). Mandamus was similarly granted in *Pan American World Airways, Inc. v. United States District Court*, 523 F.2d 1073 (9th Cir. 1975), and *McDonnell Douglas Corp. v. United States District Court*, 523 F.2d 1083 (9th Cir. 1975), *cert. denied*, 425 U.S. 911, 96 S.Ct. 1506, 47 L.Ed.2d 761 (1976), where the district court had ordered that next of kin of passengers killed in airline crashes be notified of other pending litigation against the airlines, thus exceeding its power under any statute, rule or equity power of the court.

It is our task to determine whether the action of the District Court in this case so exceeded its discretion as to be a usurpation of power requiring the issuance of the supervisory writ.

II. *The Merits*

Employment discrimination by definition has been construed as class-wide discrimination and the class action requirements have thus been broadly interpreted by the courts. *See Wright v. Stone Container Corp.*, 524 F.2d 1058 (8th Cir. 1975); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 721 (7th Cir. 1969); *Jenkins v. United Gas Corp.*, 400 F.2d 28 (5th Cir. 1968). This of course does

[4]Fed.R.Civ.P. 23.

not obviate compliance with the requirements of Rule 23, *see Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 499 (5th Cir. 1968), nor will individual claims automatically become class claims without a showing that others in the class were victims of the same or similar employment patterns and practices. *See Wright v. Stone Container Corp., supra,* 524 F.2d at 1062.

The complaint in the present action alleges no claims peculiar to the named plaintiffs, Elliott and Ambrose; instead, it charges that plaintiffs and members of the class "have been and are being deprived of income in the form of wages and of prospective retirement benefits, social security and other benefits due to them as workers, solely because of their sex." The discriminatory employment practices affecting the class which are alleged to have jeopardized jobs and adversely affected opportunities for advancement are set forth in the margin.[5]

The main thrust of petitioner's claim to relief by way of mandamus is that the District Court's certification of the class under Rule 23(b) (2), combined with the order of notice to class members similar to that required under Rule 23(b) (3), operated to lock in antagonistic members of the class and at the same time foment litigation. It was this method of proceeding, ordered by the District Court pursuant to Rule 23(d), that petitioner contends was a

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[5]The discriminatory practices and policies alleged by plaintiffs include, but are not limited to, the following:

(a) failing and refusing to hire females on an equal basis with men at a rate of pay equal to that paid males;

(b) establishing and maintaining job classifications which result in exclusion or limitation of females because of their sex from jobs and job opportunities for which they are otherwise qualified and for which sex is not a bona fide occupational qualification;

(c) failing and refusing to provide training for females because of their sex for positions for which sex is not a bona fide occupational qualification;

usurpation of power by the District Court. In order to assess this contention, we must determine (1) whether the class action certification was so plainly inappropriate that it exceeded the court's discretion, and (2) whether the additional notice requirements were, under the circumstances present in this case, clearly outside the discretion of the District Court.

A. *Class Action Certification*

The factual determinations upon which the District Court found that plaintiffs had satisfied the class action prerequisites of Rule 23(a),[5] even if arguably erroneous, do not warrant resort to supervisory mandamus. The District Court held that the requirements of numer-

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(d) failing and refusing to promote females because of their sex to positions for which sex is not a bona fide occupational qualification;
(e) establishing and maintaining seniority systems which result in more frequent lay-off of females from jobs than males;
(f) failing and refusing to pay females on an equal basis with men for substantially equal work;
(g) using subjective bases for promotion which result in discrimination against females in promotion. These subjective bases include, but are not limited to, the use of subjective and discriminatory reports and opinions from supervisors, invalid tests, invalid job requirements, repeated failures to consider the seniority of females when all other criterion [sic] and factors are relatively equal between applicants for promotion, and subjective and discriminatory granting of on-the-job training in promotion;
(h) failing and refusing to hire females for certain jobs, having females do jobs which are lower in pay, and by hiring female to do jobs which have fewer chances for promotion than jobs for which males are hired.

[5]Rule 23(a) establishes these prerequisites to maintenance of a class action:
(1) the class is so numerous that joinder of all members is impracticable,
(2) there are questions of law or fact common to the class,
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
(4) the representative parties will fairly and adequately protect the interests of the class.

osity, commonality of issues, and typicality had been met. *See* Fed.R.Civ.P. 23(a). These determinations are well within the trial court's "sphere of its discretionary power." *See Will v. United States*, 389 U.S. 90, 104, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967); *In re Cessna Aircraft Distributorship Antitrust Litigation*, 518 F.2d 213, 216 (8th Cir.), *cert. denied*, 423 U.S. 947, 96 S.Ct. 363, 46 L.Ed.2d 282 (1975). No discussion of these factors is required.

[8] A more concerted challenge is made to the District Court's finding that plaintiffs would fairly and adequately represent the class. *See* Rule 23(a) (4).[7] Our review under a petition for mandamus is limited to a determination of whether the District Court acted outside its discretion or so clearly ignored a compelling showing of inappropriateness that granting class action certification amounted to a denial of due process.

No challenge is made to the competency of plaintiffs' counsel. *See Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968). Instead, it is claimed that plaintiffs, as past officers of the union, engaged in activities in and out of office that were not consistent with the interests of other members of the class. Five sources of antagonism were brought to the District Court's attention:

1. Intra-union disputes which occurred from 1968-1970 while plaintiffs were union officers;

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[7]The issue of antagonism is occasionally considered in connection with Rule 23(a)(3)'s requirement of typicality. *See, e. g., Windham v. American Brands, Inc.*, 68 F.R.D. 641, 649 (D.S.C. 1975), *rev'd on other grounds*, 539 F.2d 1016 (4th Cir. 1976); *Kinsey v. Legg, Mason & Co.*, 60 F.R.D. 91, 99 (D.D.C. 1973); *Cannon v. Texas Gulf Sulfur Co.*, 47 F.R.D. 60, 63 (S.D.N.Y. 1969). It will suffice for our purpose to consider this issue under Rule 23(a)(4), where it is clearly material.

2. Plaintiffs, as former union officers, may be called as witnesses to defend the Local against charges that it is liable for discriminatory practices that occurred during the time they were in office;

3. Plaintiffs were suspended from office in 1970 by the International and prohibited from holding office for five years. Since that time they have initiated three different proceedings against the unions, suggesting an ulterior motive for this suit.

The class itself does not support this suit, as evidenced by a resolution of nonsupport passed 83-0 at a union meeting and by unsolicited petitions in which the signers stated they did not support the action.

5. Since plaintiffs' suspension period has ended, they are likely to run for office again and may be using this lawsuit to advance their political ambitions.

The District Court gave careful consideration to whether these factors disqualified plaintiffs as fair and adequate representatives of the class, guided by the following principles, which we hold to be correct:

(1) the antagonism which will defeat maintenance of a class action must relate to the subject matter in controversy, as when the representative's claim conflicts with the economic interests of the class;

(2) disagreements as to the remedy do not necessarily defeat a class action, especially in Title VII cases where the Court has broad powers in fashioning appropriate remedies; (3) the mere existence of political divisions or factionalism within a union does not require class decertification;

(4) disagreements as to the wisdom of a union member's suing the union are not a proper basis for decertification;

(5) union officers are not necessarily disenabled from suing on behalf of union members when the interests asserted are solely the interests of members and employees; (6) evidence of antagonism based on membership votes should be carefully scrutinized and should be clear and convincing; and (7) while questions of motive are secondary, the Court should be cognizant of the limitations of its supervisory powers and should be sensitive to the possible existence of ulterior motives which might jeopardize the interests of the class.[8]

In its carefully considered memorandum opinion, the District Court concluded that the frictions described above did not reach the subject matter of the suit; that plaintiffs' past history as union officers would not preclude a vigorous prosecution of the claims of class-based discrimination; that the evidence of lack of enthusiasm by other union employees was not reliable and in any event was not controlling; and that plaintiffs' private motives would not affect the merits of the case. No usurpation of power can be gleaned from these conclusions, singularly or in the aggregate, and a case for mandamus to review class action certification has not been made out on grounds of antagonism alone.[9]

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[8] *See Redmond v. Commerce Trust Co.*, 144 F.2d 140, 151-52 (8th Cir.), *cert. denied*, 323 U.S. 776, 65 S.Ct. 187, 89 L.Ed. 620 (1944). *See generally* C. Wright and A. Miller, 7 Federal Practice and Procedure § 1768 (1972).

[9] The District Court appropriately observed: Should genuine conflict arise in the future, the Court, being advised by counsel for the class, may remove any antagonism or, if necessary, decertify the class.

The District Court conditionally certified the class under Rule 23(b) (2). Rule 23 requires that in addition to finding, as here, that the four prerequisites of Rule 23(a)[10] have been met, there must be present one of the three alternative requirements of Rule 23(b). The District Court found that the provisions of subdivision (2) of Rule 23(b) had been satisfied:

> The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole[.]

This provision was incorporated into Rule 23 with the 1966 amendment "primarily to facilitate the bringing of class actions in the civil rights area." 7A C. Wright and A. Miller, Federal Practice and Procedure § 1775, at 24 (1972).

Rule 23(b)(2) certification is appropriate when plaintiffs seek injunctive relief from acts of an employer "on grounds generally applicable to the class." Sex discrimination in employment is such a ground. *See Donaldson v. Pillsbury Co.*, 554 F.2d 825 (8th Cir. 1977); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969). That back pay may be a form of relief sought incidental to injunctive relief will not preclude certification under Rule 23(b) (2). *Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir.), *cert. denied*, 97 S.Ct. 182 (1976); *Society for Individual Rights, Inc. v. Hampton*, 528 F.2d 905, 906 (9th Cir. 1975); *Rich v. Martin Marietta Corp.*, 522

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[10] *See* note 6, *supra*.

F.2d 333, 341 (10th Cir. 1975); *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975); *Nix v. Grand Lodge of Int'l Ass'n of Machinists*, 479 F.2d 382, 385 (5th Cir.), *cert. denied*, 414 U.S. 1024, 94 S.Ct. 449, 38 L.Ed.2d 316 (1973); *Robinson v. Lorillard Corp.*, 444 F.2d 791, 802 (4th Cir.), *cert. dismissed*, 404 U.S. 1006, 92 S.Ct. 573, 30 L.Ed.2d 655 (1971); *Bowe v. Colgate-Palmolive Co., supra*, 416 F.2d at 720; *Rodriquez v. Swank*, 318 F.Supp. 289, 295 (N.D. Ill. 1970); *aff'd without opinion*, 403 U.S. 901, 91 S.Ct. 2202, 29 L.Ed.2d 677 (1971). The District Court found that the fair representation requirement of Rule 23(a) (4) had been satisfied and we have held petitioner's mandamus challenge on that issue to be inadequate; hence there is no need to consider petitioner's argument that certification under Rule 23(b) (2) was inappropriate because of the presence of antagonism.

B. *Notice Requirements*

Under a Rule 23(b) (2) certification the class members are not entitled to notice of the action and are not entitled to "opt out" of the action if they so choose, as they would be under a Rule 23(b) (3) certification.[11] *See Rule* 23(c) (2). Because of its concern that some members of the class who did not favor a suit against the union or were less than trustful of plaintiffs' ability to represent the common interests of the class against petitioner and the unions would be "locked in," the District Court ordered that an appropriate notice be given to all members of the

[11]Under a Rule 23(b)(3) certification, the court must find that:
the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

class. Such notice would inform the class members not only of the pendency of the litigation, but also of possible back pay awards and the right of individual class members to intervene and participate directly in the suit. Petitioner charges that certification under Rule 23(b) (2), combined with the District Court's proposed notice, puts an onerous burden of intervention on unwilling members of the class and that the District Court will "potentially be fomenting litigation unfairly against the defendants." This, petitioner argues, is a usurpation of power warranting relief by mandamus. We reject this contention.

We think that petitioner misconceives the purpose of the District Court in directing that notice be given. Rule 23(b) (2) specifically authorizes the District Court to require "for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action[.]" The discretionary power to require notice in a Rule 23(b) (2) action thus serves as a "safety valve" which should be utilized "freely to protect the rights of the absentee members" to assure that a judgment in a Rule 23(b) (2) action will be "binding on all the class members." 7A C. Wright and A. Miller, Federal Practice and Procedure § 1786, at 144 (1972). *See Sanders v. John Nuveen & Co.*, 463 F.2d 1075, 1082 (7th Cir.), *cert. denied*, 409 U.S. 1009, 93 S.Ct. 443, 34 L.Ed.2d 302 (1972). Far from usurping power, the District Court in this case acted to protect the

interests of absentee members under a clear grant of discretionary power. We cannot read into this action a tacit recognition that it was done to alleviate a presently existing antagonism within the class with respect to the subject matter. It was rather a prudent safeguard against future antagonism which might affect the binding nature of a Rule 23(b) (2) judgment. Moreover, the District Court retains the power to decertify the class or create sub-classes if subsequent events indicate the need to do so. *See Donaldson v. Pillsbury Co., supra,* 554 F.2d at 832, n. 6.

III. *Conclusion*

We emphasize that petitioner's claims were reviewed here under the narrow standard applicable to a mandamus proceeding.[12] We do not say that the result would have been different under a 28 U.S.C. § 1292(b) interlocutory review, but it is clear that this case does not present the extraordinary situation for which mandamus is reserved. *See In re Cessna Distributorship Antitrust Litigation, supra,* 532 F. 2d at 68; *Stein v. Collinson,* 499 F.2d 91, 95 (8th Cir. 1974); *Gialde v. Time, Inc.,* 480 F.2d 1295, 1302 (8th Cir. 1973).

The petition for writ of mandamus is denied.

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[12]Thus circumscribed, we nonetheless express our concerns about the marginal nature of the class representatives in this case. We are confident that the experienced district judge will continue to monitor the performance of the class representatives and will take appropriate action if antagonisms going to the merits of the claim surface within the class. *See* note 9, *supra.*

APPENDIX B

Delores ELLIOTT, Helen Ambrose, Roberta Pettit, and all other persons similarly situated,

Plaintiffs,

v.

SPERRY RAND CORPORATION, a Delaware Corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

No. 4-74-Civ. 627.

United States District Court,
D. Minnesota,
Fourth Division.

July 12, 1978.

MEMORANDUM ORDER

LARSON, District Judge.

Defendant Sperry Rand has brought three motions before the Court: (1) to decertify the class, (2) in the alternative to amend the class certification, and (3) to strike all allegations in the complaint relating to the seniority system. The other defendants join in the motions. The motions are based in part upon three United States Supreme Court decisions decided after certification of this class action. *International Brotherhood of Teamsters v. United*

States, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977); *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977); and *East Texas Motor Freight System v. Rodriguez*, 431 U.S. 395, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977).

1. *Motion to Decertify.*

Sperry Rand argues that the Supreme Court's decision in *East Texas Motor Freight v. Rodriguez, supra,* bears on the propriety of the class certification in this case in two respects. First, defendant suggests that under *Rodriguez,* a class should not be certified if the named plaintiffs are unable to prove their individual claims and therefore, in the interest of economy, the named plaintiffs' claims should be tried first. If those claims fall, defendants assert, *Rodriguez* mandate dismissal of the class action.

In *Rodriguez* the named plaintiffs did not move before trial for class certification. They confined their arguments and evidence at trial to their individual claims. The district court held against them on those claims and then dismissed the class action allegations. The Court of Appeals reversed and *sua sponte* certified the class. In reversing the Court of Appeals, the Supreme Court held that it was improper to certify the class because "it was evident by the time the case reached that court that named plaintiffs were not proper class representatives" because, among other things, they were not class members. *Rodriguez, supra,* at 403, 97 S.Ct. at 1896.

Rodriguez is clearly distinguishable from the case at hand. it certainly does not suggest that a district court should order plaintiffs to try their individual claims

before certified class claims are tried. Such orders would undermine the principle that the merits of an action are not to be considered in determining the maintainability of a class action. *Miller v. Mackey International Inc.*, 452 F.2d 424 (5th Cir. 1971); *Elliott v. Sperry Rand*, No. 4-74-Civil 627, Memorandum Order, May 27, 1976, at 19; 7 Wright & Miller, *Federal Practice and Procedure*, § 1759 at 577-78 and Suppl. § 1759 n.81. Nor did the Supreme Court suggest that certified class claims must always be dismissed if named plaintiffs fail to prove their own claims—it expressly noted the distinction between cases in which individual claims are tried prior to any request for certification and cases in which a class is properly certified. *Rodriguez, supra*, 431 U.S. at 406 n.12, 97 S.Ct. 1891. In the latter situation, even if the individual claims fail, the class action may be permitted to proceed, depending upon the adequacy of named plaintiff's efforts on behalf of the class. *See Moss v. Lane Co.*, 471 F.2d 853, 855-56 (4th Cir. 1973). Finally, as this Court has noted before, in order to prove their individual claims, plaintiffs will probably proceed at trial by means of evidence which demonstrates class discrimination—the "economy" of trying individual claims first is thus questionable. In short, the Court sees no merit to this proposal and declines to grant a separate trial on this issue.

The second aspect of *Rodriguez* upon which Sperry Rand relies is the Supreme Court's discussion of antagonism between named plaintiffs and the class. Union members in *Rodriguez* had voted against a merger of two collective bargaining units; named plaintiffs, seeking to represent minority members of the union, requested such a merger in their complaint. The Supreme Court cited this as

"another factor" militating against certification in that case. Sperry Rand argues that since this Court relied on the appellate opinion in *Rodriguez,* now overturned, it should reconsider its analysis of the antagonism question here.

The Court notes that its previous decision did not rely on *Rodriguez* alone, but on principles drawn from other cases as well. *Memorandum Order,* May 27, 1976, at 14-17. Moreover, the Supreme Court opinion cannot be viewed as holding that as a matter of law any vote by class members or putative class members contrary to some expressed view of named plaintiffs makes certification improper. That determination necessarily turns on the facts of each case. The relevant facts here were closely analyzed and the Court found that the vote involved was unreliable; the voters were not congruent with the class; it was unclear how much information the voters had and whether it was correct; and that the vote revealed little about the degree and nature of the opposition to the suit other than generalized displeasure. It was not even clear whether the voters opposed the particular relief plaintiffs seek. *Rodriguez* has no bearing on these factual findings.

Finally, defendant requests decertification because named plaintiff Elliott resigned from Sperry Rand in December of 1977. They assert that she is no longer a proper class representative because as a nonunion member she is in an adverse economic position to current employees who are union members. The latter may be required to pay for a damage claim, through their dues if the union is found liable, while Elliott is not faced with this possibility. But the class includes former employees and Elliott is a

member of that group. Former employees have frequently been permitted to represent current employees. *See e. g. Reed v. Arlington Hotel,* 476 F.2d (8th Cir. 1972), *cert. denied* 414 U.S. 854, 94 S.Ct. 153, 38 L.Ed.2d 103 (1973). Moreover, the other named plaintiff is still an employee of Sperry Rand—if anything, Elliott's resignation is a positive factor, for we now have a current employee and a former employee representing a class composed of both groups. Finally, as the Court has noted before, should an actual conflict surface due to the factors defendants cite, it can appropriately be dealt with at that time.

II. *Motion to Amend.*

The class was conditionally certified and defined to include:

> "former, present, and future female employees of defendant Univac employed at its plants in and near St. Paul, Minnesota and who are, have been, or will be members of defendants Local and International, for the period commencing on July 2, 1965 and continuing to the date of trial."

Defendants request that the certification be altered as follows:

> "Those female employees of defendant Univac employed at its plants in and near St. Paul, Minnesota, who are, have been, or will be members of defendants Local and International, for the period commencing 180 days prior to the filing of the EEOC complaint enabling this Court to assume jurisdiction in this action, September 4, 1972."

September 4, 1972, refers to the date 180 days preceding the filing.

The amendment would limit the class to present employees and former employees who worked for Sperry Rand as of September 4, 1972. But it appears from defendant's supporting memorandum that it also wishes to limit the actionable *claims* in the suit to claims arising on or after September 4, 1972, a limitation which the proposed class definition does not accomplish because the scope of the claims and the membership of the class are not necessarily congruent. A *present* employee may assert claims arising in 1970, for example. The Court believes that the first issue—who may be a class member—can be resolved at this time. The second question is more complex, has little to do with the class definition, and may depend upon the facts as they subsequently develop; the Court will briefly discuss the issue in order to alert the parties to some of the Court's concerns in this difficult area of law, but resolution of the questions raised by defendants' memorandum will be deferred. Some background is helpful to an understanding of both issues.

As a general rule, complaints in Title VII cases must be filed with the EEOC in accordance with the time limits set out by the statute, 42 U.S.C. § 2000e-5(e).[1] Failure to make a timely filing with the EEOC is, of course, grounds for dismissal of an action in district court. In order to determine whether a charge is "timely," however, the Court must determine when the alleged Title VII violation occurred. This has proved surprisingly difficult, for some

[1]In some circumstances charges may be filed with State enforcement agencies and the time periods for filing vary. Since the period for filing with the EEOC relevant to this suit is 180 days, that figure will be used throughout this opinion as a matter of convenience.

employment practices cannot logically be viewed as discrete "incidents" occurring at a particular point in time—a whole series of decisions, for example, may influence whether an employee is promoted. Courts have developed the concept of "continuing violations" to resolve timeliness questions, but the case law on this subject is inconsistent and confusing, for the concept is actually a conglomeration of several different ideas. The recent Supreme Court decision in *United Air Lines, Inc. v. Evans, supra,* appears to add to the confusion. It has been suggested that, at least before *Evans,* the theory was used in four different types of circumstances. *Schlei & Grossman, Employment Discrimination Law,* Chapter 28 (1976). This framework is a helpful way to analyze the theory, but the Court notes that the cases rarely fall neatly into one category or another and there may be additional methods of categorizing the cases not discussed below.

The first situation, and perhaps the clearest, is typified by the example above—in some instances, different events occurring at different times may ultimately result in unlawful discrimination and the Court must determine which event triggered the running of the statute. Using the example of promotions, courts may consider factors such as when the employee was told of the promotion decision, whether others were subsequently promoted while the employee's application remained open, or how many levels of decision-making might be required in the structure of the employer's business. *See e. g., Cedeck v. Hamiltonian Federal Savings & Loan,* 551 F.2d 1136 (8th Cir. 1977). *See also Gates v. Georgia-Pacific Co.,* 492 F.2d 292 (9th Cir. 1974). *But cf. Phillips v. Columbia Gas Co. of W. Va. Inc.,* 347 F.Supp. 533 (S.D.W.Va. 1972), *aff'd*

474 F.2d 1342 (4th Cir. 1973). Although the "continuing violation" language may be used in this context, it seems that the courts are not really concerned with continuity so much as they are with practically assessing the employment situation from the lay person's viewpoint. The focus is on what event, in fairness and logic, should have alerted the average lay person to act to protect his rights, or when he should have perceived that discrimination was occurring.

The second situation is quite different. An employee may challenge a series of events, all of which are alleged to have been discriminatory, but only one of which occurred within the relevant time period. An employee, for example, may be repeatedly denied a benefit; so long as the most recent denial occurred within the appropriate time period, no "continuing violation" question really arises, for the recent event fully supports jurisdiction. But the cases do not always clearly delineate this distinction. *Compare Cox v. United States Gypsum Co.*, 409 F.2d 289 (7th Cir. 1969), with *Marlowe v. General Motors Corp.*, 489 F.2d 1057 (6th Cir. 1973).[2] Moreover, once it is determined that the Court has jurisdiction because at least one event in a series was timely challenged, another question arises—can the employer be held liable for all of the events or only for the one occurring in the charge-filing[3] period? Plaintiffs will often argue in such cases that

[2] *Cox* has been cited for the proposition that layoffs are continuing violations. *Macklin v. Spector Freight Sys., Inc.*, 156 U.S.App.D.C. 69, 478 F.2d 979 (1973), but as Schlei & Grossman point out, it was actually a pleading case in which the court construed allegations of discriminatory layoffs to encompass allegations of discriminatory recall within the proper time period. *Schlei & Grossman, supra*, at 898-99. "Continuity" was thus not actually at issue.

[3] "Charge-filing period" refers to the period 180 days preceding the filing of charges with the EEOC.

the violations were continuing, creating a pattern of discrimination against them, so that all of the events are actionable. Courts' responses to this argument vary. *Compare Tarvesian v. Carr Div. of TRW, Inc.*, 407 F.Supp. 336 (D.Mass. 1976), and *Loo v. George*, 374 F.Supp. 1338 (D.Hawaii 1974), with *Lattimore v. Loews Theatres, Inc.*, 410 F.Supp. 1397 (M.D.N.C. 1975), and *Fekete v. United States Steel Corp.*, 353 F.Supp. 1177 (W.D.Pa. 1973).

The third situation is one in which allegations are made that the employer has engaged in a continuous, pervasive, institutionalized "system" of discrimination. The key question here is not necessarily whether a present violation exists, for the ongoing operation of the entire system is often at issue. But the standing of the charging party may be questioned because he is unable to point to a specific instance in the charge-filing period in which the system adversely affected him. An employer charged with maintaining an unlawful transfer system, for example, may argue that the plaintiff did not apply for a transfer within the statutory time limits preceding the filing and therefore has no cause for complaint. This issue is often resolved by theorizing that a challenge to systematic discrimination is always timely if brought by a present employee, for the existence of the system deters the employee from seeking his full employment rights or threatens to adversely affect him in the future. *See e. g., Rich v. Martin Marietta Corp.*, 522 F.2d 333 (10th Cir. 1975); *Wetzel v. Liberty Mutual Ins. Co.*, 508 F.2d 239 (3rd Cir.), *cert. denied* 421 U.S. 1011, 95 S.Ct. 2415, 44 L.Ed.2d 679 (1975). *See also Bartmess v. Drewrys USA, Inc.*, 444 F.2d 1186 (7th Cir.), *cert. denied*, 404 U.S. 939, 92 S.Ct.

274, 30 L.Ed.2d 252 (1971). The same question of whether events preceding the charge-filing period are relevant to liability may arise in this situation, as it does in the second situation described above; but in systematic discrimination cases, courts seem to simply assume that such events are actionable. In *Rich v. Martin Marietta, supra,* the Court of Appeals criticized the district court for relying on *post*-filing statistics in holding that defendant had not discriminated. *Id.* at 346.

Finally, the continuing violation rubric may be used where an employee charges that a present practice perpetuates the effects of past discrimination. In such cases, the present policy may be entirely neutral, but may carry forward the effects of abandoned and previously unchallenged discriminatory practices. These types of cases are perhaps the most difficult, for, at bottom, they do not raise purely procedural "timeliness" questions. Rather, they involve the substantive question of whether a particular employment practice that applies equally to all employees, and has no disparate impact on any group, is nevertheless unlawful because it fails to place prior discriminatees in their "rightful places." *See e. g., Marquez v. Omaha District Sales Office, Ford Motor Co.,* 440 F.2d 1157 (8th Cir. 1971).

Another, slightly different, aspect of what is indiscriminately called the "continuing violation" theory is whether former employees can properly assert continuing violation claims. If a charge is filed within 180 days of termination, the timeliness of the challenge to particular practices can be analyzed by one of the several methods discussed above. Thus, if a policy has remained in existence

or a pattern of discriminatory events has occurred right to the date of discharge, the charge may be deemed timely. The former employee has standing to assert the claim because, within the charge-filing period, he was subject to the discriminatory policy or practice. This rationale appears to break down, however, if the filing occurs more than 180 days following termination. Whatever the nature of the charges, the suit would appear to be time-barred, for the last possible date upon which a policy or practice could have adversely affected the former employee was outside the statute of limitations. The Eighth Circuit has held that as a general rule former employees cannot use the continuing violation theory to excuse a failure to file within 180 days of their termination:

> "We do not think this [continuing discrimination] theory has any validity when asserted by a former employee. . . .
>
> For such a former employee the date of discharge or resignation is the controlling date under the statute, and a charge of employment discrimination must be timely filed in relation to that date." *Olson v. Rembrandt,* 511 F.2d 1228, 1234 (8th Cir. 1975).

But see EEOC v. Western Publishing Co., 502 F.2d 599 (8th Cir. 1974) (In particular circumstances of case, discrimination continued after employment terminated).

Defendant's present motion to amend actually relates only to the last point. In a class action, the timely filing by any member of the class satisfies the filing requirement for the entire class. The filing does not operate, however, to bring into the class persons whose claims

were time-barred when the filing occurred. Since the statute runs against former employees as of the date of their termination, it follows that they cannot be members of the class unless they were employed within the appropriate time limit preceding the representative filing, even if "continuing violations" are alleged. Many courts have so ruled. *See e. g., Laffey v. Northwest Airlines,* 185 U.S. App.D.C. 322, 365-66, 567 F.2d 429, 472-73 (1972); *Wetzel v. Liberty Mutual Insurance Co., supra; Coppotelli v. Howlett,* 76 F.R.D. 20 (E.D. Ill. 1977); *Carter v. Newsday,* 76 F.R.D. 9 (E.D.N Y. 1976). *But see Briggs v. Brown & Williamson Tobacco Corp., Inc.,* 414 F.Supp. 371 (E.D. Va. 1976). The discussion in *Laffey, supra,* is most helpful in analyzing this issue:

> "[The representative filing], it seems clear, however, cannot revise claims which are no loger viable at the time of the filing. Any other result would produce an anomaly. Time-barred members could not press their claims individually either before the Commission or judicial tribunals; and surely the employer's liability to them cannot be made to depend upon whether they come into court in a different character. . . . Not surprisingly, then, courts which have considered the question have uniformly held that only those employees who could have filed charges with the Commission individually when the class filing was made are properly members of the litigating class.
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> * * * * * *
>
> It is contended, however, in support of the District Court's inclusion of the disputed class members within its Title VII award, that the Title VII violations com-

plained of were of a continuing nature and thus that all past and present stewardesses could have made timely filings . . . when the filing for the class occurred. . . We agree that where, as here, discrimination is not limited to isolated incidents but pervades a series or pattern of events which continue to within ninety days of the filing . . the filing is timely as to all similarly situated employees regardless of when the first discriminatory incident occurred.

* * * * * *

NWA does not dispute that the violations here are of a continuing kind. But NWA does contend that the discrimination could not be deemed continuing as to those who left the company's employ more than ninety days prior to the class filing. . . . We are in agreement. . . A severing of the employment relationship ordinarily terminates a discrimination against the severed employee, and activates the time period for filing charges with the Commission concerning any violation which occurred at separation or which may have been continuing up to the date thereof." 185 U.S. App. D.C. at 365-66, 567 F.2d at 472-73 (footnotes omitted).

Although defendant relies on *Evans* to support the amendment of the class defintion, the principles discussed above were developed before *Evans* was decided. Thus, other than to note that *Evans* is not inconsistent with these decisions, it is unnecessary to discuss that case in relation to this part of defendant's motion. The class definition as presently worded would include former employees who may have left defendant's employ long ago and whose claims have long been barred. The Court agrees with defendant that the class definition ought to be amended to cut out employees who left Sperry Rand, by

involuntary discharge or quitting, more than 180 days preceding the filing of the complaint in this case.

This conclusion disposes of defendant's present motion. But as the Court has already noted, the amended class definition does not accomplish all that defendant apparently wishes to accomplish, for it cuts out some class members but does not affect the scope of the claims that may be asserted by the remaining class members. Some further discussion of *Evans* may be helpful to clarify this point.

Defendant apparently wishes to limit the actionable claims in this suit to claims arising on or after September 4, 1972, based on the decision in *United Air Lines, Inc. v. Evans, supra*. In *Evans*, a flight attendant who worked for United was forced to resign in 1968 when she married because the company had a "no marriage" rule. She was rehired in 1972, but was not credited with seniority for any service prior to the date of rehiring. She filed with the EEOC in February 1973 and subsequently brought suit. The District Court dismissed the complaint on the ground that the claim was time-barred for failure to file within 90 days of the separation in 1968. The Court of Appeals reversed and the Supreme Court reversed the Court of Appeals, holding that the complaint was properly dismissed. Evans contended that the complaint was timely because United was guilty of a present continuing violation. Two reasons were used as support for this argument: first, the seniority system illegally discriminated against her because she was treated less favorably than males hired after her termination but before her re-employment; and, second, that the seniority system perpetuated past discriminatory acts.[4] The Supreme Court rejected both arguments. It

[4]Encompassed in this argument was the theory that the system not only perpetuated past discriminatory acts, but that it was an existing policy that could always be timely challenged. Evans' claim came years after her original discharge and a year after rehiring.

noted that United treated both males and females hired between 1968 and 1972 alike and, furthermore, did not grant seniority credit to either male or female employees who left before 1968 and were subsequently rehired. In short, the seniority system did not differentiate between similarly situated males and females on the basis of sex.

As to the second argument, the Court agreed that the seniority system gave present effect to a past act of discrimination, but said:

> "But United was entitled to treat that past act as lawful after respondent failed to file a charge of discrimination within the 90 days then allowed by § 706(d). *A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed.* [Emphasis added]. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences.
>
> * * * * * *
>
> Respondent emphasizes the fact that she has alleged a *continuing* violation. * * But the emphasis should not be placed on mere continuity; the critical question is whether any present *violation* exists. [Emphasis in original.]" *Evans, supra,* 431 U.S., at 558, 97 S.Ct., at 1889.

The Court added that the seniority system was immunized from attack under § 703(h) of the Act.

Defendant contends that the italicized *sentence* means that the entire theory of "continuing violations," presumably in all of its varied forms, has been put to rest. Understandably, the contours of defendant's argument are

not entirely clear, for the implications of *Evans* are as uncertain as pre-*Evans* case law was diverse and confusing. Defendant may be asserting any one of several different propositions: (1) that the type of analysis courts use in the first situation discussed above to determine when plaintiffs should reasonably have been expected to bring their complaints is no longer viable; or (2) that evidence of systematic discrimination that occurred before September 4, 1972, is irrelevant to any finding of liability in this suit; or (3) that no neutral practice, whether or not it is tied to a seniority system, which perpetuates the effects of discrimination occurring before the charge-filing period is actionable; or (4) that even if a present violation is established, no class member whose claims arose before the charge-filing period and were based on the same type of discriminatory event is entitled to relief.

Post-*Evans* law on "continuing violations" is in disarray and support can be found for almost any of these propositions. The EEOC views *Evans* merely as holding, in accord with prior case law, that discharges cannot be deemed "continuing violations," but as having no other effect on the concept. EEOC Interpretative Memorandum, 46 U.S.L.W. 2028 (July 19, 1977). *See also Miller v. Miami Prefab*, 438 F.Supp. 176, 179 (S.D.Fla. 1973). A broader view is that *Evans* prohibits a plaintiff from building a prima facie case based on occurrences preceding the charge-filing period. *See Neloms v. Southwestern Electric Power*, 440 F.Supp. 1353, 1369 (N.D.La. 1977) (". . . the only actionable claims would be those that occurred within 180 days of the filing of the earliest charge of discrimination. . . . [T]he Court, in examining statistical evidence, must judge the hiring and promotions statistics, as well as

others, from a point in time 180 days prior to the . . . filing"). *See also Dickerson v. United States Steel Corp.*, 439 F.Supp. 55, 69-70 (E.D. Pa. 1977). *But cf. Caldwell v. Seaboard Coastline R.*, 435 F.Supp. 310 (N.D.N.C. 1977) (*Evans* held not to affect class suit alleging a pattern or practice of discrimination).

The Eighth Circuit, in a two to one decision in a case very similar to *Evans*, decided that *Evans* barred the claim of a pre-Act discriminatee who challenged a presently neutral system which perpetuated past discrimination by denying her the same salary she would have had had the pre-Act discrimination not occurred. The case is thus broader than *Evans* in that it does not involve either post-Act discrimination or a seniority system. *Farris v. Board of Education of City of St. Louis*, 576 F.2d 765, filed May 17, 1978 (8th Cir.).[3] One court has also held that even where a present discriminatory practice is shown, relief can extend only to class members who were affected by the practice in the charge-filing period. *See Dickerson v. United States Steel Corp., supra. But cf. Miller v. Miami Prefab, supra.*

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[3]Judge Ross, dissenting in *Farris*, noted an apparent incongruity between the reiteration of the holding in *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971), in the *Teamsters* case, *International Brotherhood of Teamsters, supra*, at n. 15, and the statements of the Court in *Evans*. *Griggs* has been regarded as a "perpetuation" case and the Court in *Teamsters* acknowledged that but for § 703(h), the seniority system in *Teamsters* would fall under the *Griggs* rationale because the system perpetuated past acts of discrimination. In another sense, however, *Griggs* and *Evans* and *Teamsters* are not necessarily antagonistic, for *Griggs* is also the classic "disparate impact" case. That is, the practices struck down in *Griggs* were unlawful not only because they "perpetuated" the effects of a past act, but because the purportedly neutral requirements the employer imposed conveniently favored whites and disproportionately burdened blacks. Thus it would seem that a wholly neutral system that perpetuates a past act of discrimination against a particualr employee must be sharply distinguished from a purportedly neutral system which has a present disparate impact on a protected group.

Although the Court declines to express agreement or disagreement with these various positions at this time, it should be evident that it is difficult to treat *Evans* simply as a wholesale rejection of the continuing violation theory in all of its forms. When viewed against the complex background of years of Title VII litigation in which the concept develooped, the one-sentence dictum from *Evans* hardly appears to represent a considered judgment on every use of the theory in every situation.* The arguments on this issue must be considerbly refined and clarified before a decision can be reached on the possible applications of *Evans* here. Perhaps no "continuing violation" question will arise at all during the liability phase of the suit, for plaintiffs have alleged that violations exist at present and it is unclear how far back plaintiffs' proof might go; or, perhaps, the application of *Evans* will be relevant to some claims, or some class members, but not to others. In short, if the factual issues are more clearly presented and the legal arguments consequently more narrowly defined and focused, the task of the parties and the Court will be far more manageable. Although another pretrial motion might suffice to present the questions with sufficient specificity, this determination may have to await trial on the merits.

III. *Motion to Strike.*

All of the defendants make the final point that a separate trial should be held on the seniority system, for purposes of economy. If the seniority system is bona

*The Supreme Court did not even mention, for example, the fact that Congress has expressed approval of the continuing violation theory. *See* 118 *Cong. Rec.* 494 (1972).

fide, they assert, the seniority claims can be stricken and, moreover, *all* of plaintiffs' claims will fall and the case will be at an end. This is premised on the assumption that all of plaintiffs' claims are tied in some fashion to the seniority system rather than to other practices. Although the Court agrees that the bona fides of the seniority system is an important issue, for the system may be immune from attack under *Teamsters, supra,* it is not at all clear that plaintiffs' complaints relate solely to seniority; the allegations are quite to the contrary. The Court therefore cannot agree at this time that a separate trial is in order, for even if the bona fides of the system are established, it is not certain that the necessity for further trial would be obviated.

But the Court is aware that one of defendants' concerns underlying this request, as well as the other request for a separate trial, is that the particulars of plaintiffs' case are difficult to identify and the precise nature of the charges is unclear. The Court therefore feels that an Order for pretrial statements must be entered so that the Court and the parties can anticipate the legal and factual issues that may arise.

IT IS THEREFORE ORDERED THAT:

1. Defendants' motion to decertify the class is denied.

2. Defendants' motion for a separate trial of named plaintiffs' claims is denied.

3. Defendants' motion to amend the class certification is granted. The class shall be defined as follows:

> Those present and future female employees of defendant Univac employed at its plants in and near St. Paul, Minnesota, and woh are or will be members of defendants

Local and International, up until the date of trial; and those former female employees who were employed by defendant Univac at its plants in and near St. Paul, Minnesota, and who were members of defendants Local and International, on September 4, 1972, or thereafter.

4. Defendants' motion for a separate trial on the seniority system is denied.

5. A pretrial conference will be held on Friday, September 1, 1978, at 9:00 A.M.

The attorneys for the respective parties are hereby directed to submit to the Court before August 25, 1978, the following:

(a) A written stipulation or statement of the uncontested facts.

(b) A written statement which shall contain for each allegation in the complaint a concise summary of the essential facts pertinent to the allegation; and a recital of the contested issues of fact; and recital of the contested issues of law relating to each claim. The attorneys shall exchange these written statements prior to the conference. At the conference the Court will consider (1) simplification of the issues and (2) desirability of further pretrial orders relating to the conduct of the litigation.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all other persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

MEMORANDUM ORDER

4-74-Civ. 627

The Court now has before it in this action the Petition of plaintiffs and defendants seeking an Order under Rule 23 approving the Stipulation of Settlement of this lawsuit entered on May 20, 1981. Counsel for the objecting named plaintiffs oppose the Petition and request an Order requiring the parties to either renegotiate the settlement agreement or resume the trial of the case. Seven hundred ninety of the 4,100 class members filed objections with the Court. The attorneys for the class and the attorneys for the named plaintiffs seek attorneys' fees and costs and expenses. Hearings were held on July 27, 1981, and on July 30, 1981.

Rule 23 (e) (3) of the Federal Rules of Civil Procedure

requires the Court to approve the settlement of a class action. In determining whether to approve a proposed settlement, the Court must find that the agreement is fair, adequate, and reasonable. *Cotton v. Hinton,* 559 F.2d 1326, 1330 (5th Cir. 1977). *See also Reynolds v. National Football League,* 584 F.2d 280, 282-83 (8th Cir. 1978). Counsel for the named plaintiffs claim that (1) the amount of the settlement fund, $1.5 million, is inadequate; (2) there is no guarantee that Sperry will comply with the injunctive relief mandated by the settlement; and (3) named plaintiffs were denied due process rights by the settlement procedures.

This settlement is no different than others in that it is a compromise. And compromises rarely are completely satisfactory to all parties involved. A significant number of class members have indicated their disapproval with the proposed settlement. Of the 30 class members who testified concerning their opposition, however, many voiced grievances unrelated to the subject matter of this lawsuit. The objections of those who did testify concerning the settlement were articulate and well-reasoned, and the Court appreciates their assistance.

Considering the likelihood that plaintiffs would prevail at trial and the range of possible recoveries if the plaintiffs were to prevail, the Court is of the opinion that the proposed settlement is fair, reasonable and adequate. It must be approved. Plaintiffs presented evidence indicating that their case, or at least a portion of it, was relatively strong. Defendants, however, were successful in exposing several weaknesses in the plaintiffs' case and defendants' experts have exposed further weaknesses, particularly in the plaintiffs' allegations that are the basis for much of

the damage claims. Granted, the settlement may not be the perfect solution for all, or perhaps any, of the parties. But upon evaluating the strengths and weaknesses of the plaintiffs' case and the probable evidence which the defendants would have offered at trial, it becomes clear that the result reached via the settlement route is a proper and appropriate one.

This lawsuit has traveled a long and often arduous path. Costs have been extremely high and further trial will likely exacerbate the already high expenses. It is the opinion of the Court that the amount of the proposed settlement fund is adequate, and the distribution system is fair. While the amount is not what plaintiffs sought, it is surely not an insignificant award and there is a risk, were the case to continue, that plaintiffs would not be successful and would not recover any damages. In addition, the value of the injunctive relief provided in the agreement and the changes that already have occurred at Univac as a result of this lawsuit are substantial. Although it may not be necessary, the Court will retain jurisdiction over the case to ensure that there is compliance with the terms of the settlement. The Court has examined very carefully the allegations concerning the negotiations leading up to settlement and found nothing improper. Just as during trial, the interests of the class were vigorously and excellently represented by counsel for the class.

The plaintiffs have achieved a great deal in this lawsuit. They have substantially corrected what they alleged to be serious violations of federal employment discrimination laws and, as a result of the settlement, have received some financial recompense. This final settlement of the differences of the parties is a good one and it must therefore be approved.

In addition to the monetary relief, plaintiffs have obtained equalization of the general labor and assembler wage rates, promotion procedures for lead persons, equalization of the ADMO and PMO wage rates, provision for promotion outside the bargaining unit, job analysis requirements, and other relief set out in the settlement agreement.

The Petition by class counsel for approval of an award of attorneys' fees in the amount of $500,000 and costs in the amount of $350,000 is reasonable, agreed upon by the parties, and will be approved by the Court. In the view of the Court, counsel for the class performed exceptionally well throughout the difficult trial, and the agreed upon amount of $500,000, approximately 80% of the amount counsel would have charged based on their hourly fees, is well justified. The Court appreciates the fact that the parties agreed upon the attorneys' fees in the settlement.

As of July 22, 1981, the sum of $365,037.41 had been paid by the two plaintiff law firms for costs and expenses in the litigation. Included were payments to experts who prepared reports and testified in plaintiffs' part of the trial. Payments were made to Analytics, Inc., of $204,-961.31, to Richard Strachan of $63,867.14, and to PDRI of $34,263.97. The settlement agreement of May 20, 1981, and the notice to the class stated that costs and expenses of $350,000 would be paid to the two plaintiffs' law firms.

Analytics, Inc., has filed what purports to be a Notice of Appearance and Claim against Settlement funds for an additional amount of $35,359.46. This claim is in addition to the $204,961.31 already paid by plaintiffs' counsel to Analytics. The additional claim involves a dispute between plaintiffs' counsel and Analytics and if the dispute

continues should be the subject of a separate lawsuit. The additional claim is denied.

The two named plaintiffs did not prevail in their challenge to the proposed settlement and thus their claim for attorneys' fees does not qualify under the applicable statute. The two named plaintiffs' request for attorneys' fees is based on a common benefit theory which is unsupportable. The request must be denied.

Based on the memoranda submitted by the parties, the oral submissions at the hearings. the objections filed with the Court, and the record of this entire lawsuit including the trial of some seven weeks, the Court finds that the settlement is fair, adequate, and reasonable.

IT IS ORDERED THAT:

1. The Petition of plaintiffs and defendants for an Order approving the Stipulation of Settlement of this case be, and hereby is, granted.

2. The Petition of named plaintiffs opposing the Stipulation of Settlement be, and hereby is, denied.

3. Attorneys' fees and costs be awarded tc counsel for the class in the amount of $850,000.00.

4. The request for attorneys' fees and expenses by the objecting named plaintiffs against all three defendants be, and hereby is, denied.

5. The claim of Analytics, Inc., for $35,359.46 against the settlement funds be, and hereby is, denied.

6. Pursuant to paragraphs 6 and 18 of the Stipulation of Settlement defendant Sperry Rand (Univac) will deposit $1,500,000.00 in a settlement fund and $850,000.00

in an attorneys' fees and expense fund, each to bear interest in accordance with the stipulation.

7. Settlement payments to class members pursuant to paragraph 9 of the Stipulation of Settlement will be made by check issued by Sperry Rand (Univac) within 30 days after final disposition by the Court or Courts of the Order approving the settlement of the Class Action and the time for appeal has expired.

August 11, 1981.

/s/ Earl R. Larson
United States Senior District Judge

Appendix D

United States Court of Appeals
For The Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

June 23, 1982

Ms. Donna L. Roback
and Ms. Judith M. Wolf
Mr. David S. Doty and
Ms. Sally A. Johnson
Mr. James T. Hansing
Messrs. J. Richard Bland
and Bradley M. Jones
Mr. Richard A. Williams, Jr.
Messrs. Hyman Edelman and
William Z. Pentelovitch

Re: 81-1977/95 Delores Elliott, et al v. Sperry Rand Corp., et al

Dear Counsel:

Enclosed is a copy of the opinion of this Court filed today in the above case. Judgment in accordance with the opinion is also entered today.

Please consult the appropriate Federal Rules of Ap-

pellate Procedure and the Eighth Circuit Rules (15 & 16) for post-opinion procedure, particularly circuit Rule 16 (d).

Sincerely,

Robert D. St. Vrain
Clerk of Court

enc.
lkl

cc: Hon. Earl R. Larson, Senior Judge
Mr. Robert E. Hess, Clerk-Minneapolis
4-74- Civ 627

United States Court of Appeals
For The Eighth Circuit

Appeal and Cross-Appeal from the United States District Court for the District of Minnesota.

No. 81-1977

Delores Elliott, Helen Ambrose and all other persons similarly situated,

Appellants,

v.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Appellees.

D-3

No. 81-1955

Delores Elliott, Helen Ambrose and all other persons similarly situated,

Appellees,

v.

Sperry Rand Corporation, a Delaware corporation,

Appellant,

International Brotherhood of Electrical Workers, AFL-CIO and Local Union No. 2047 of the International Brotherhood of Electrical Workers.

Submitted: May 17, 1982
Filed: June 23, 1982

Before BRIGHT and McMILLIAN, Circuit Judges; and HARRIS, Senior District Judge.*

PER CURIAM.

Named plaintiffs-appellants Elliott and Ambrose objected to the proposed settlement of a class action alleging sex discrimination by the Sperry Rand Corporation (Sperry Rand) and appeal from the district court's order approving the settlement, awarding attorneys' fees to class counsel, and denying them attorneys' fees. Sperry Rand cross-appeals from the district court's ruling that the class, not Sperry Rand, receive interest on the settlement fund which Sperry Rand has deposited separately pending

*OREN HARRIS, United States Senior District Judge, Eastern and Western Districts of Arkansas, sitting by designation.

distribution to the class. We affirm in part, reverse in part, and remand for a determination and award of attorneys' fees to the named plaintiffs.

Delores Elliott, Helen Ambrose, and Roberta Pettit initially brought this action against Sperry Rand, the International Brotherhood of Electrical Workers, and Local Union No. 2047, alleging sex discrimination in employment, in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e *et seq*. The district court, the Honorable Earl R. Larson presiding, certified this case as a class action on May 27, 1976. This court denied Sperry Rand's petition for a writ of mandamus seeking decertification of the class in *Sperry Rand Corporation v. Larson*, 554 F.2d 868 (8th Cir. 1977).

Trial began on September 8, 1980, and continued through October 24, 1980, when plaintiffs rested their case. Before resumption of the trial scheduled for January, 1981, the parties entered into serious settlement negotiations. Elliott and Ambrose, the named plaintiffs, became dissatisfied with the course of these negotiations, and as a result, retained separate counsel in April 1981. The parties, however, reached agreement in May 1981, and class counsel, along with counsel for the defendants submitted a stipulated settlement to the district court for approval.

On July 27, 1981, the district court held a hearing on the fairness of the proposed settlement. Seven hundred and ninety class members, including the named plaintiffs, filed objections to the stipulated settlement.[1] Approximately thirty class members testified in opposition to the settle-

[1]The total class consisted of approximately 3,000 members. The vast majority approved the settlement.

ment. Elliott and Ambrose appeared at this hearing to voice their objection to the settlement and were represented by separately retained counsel.

The district court entered an order on August 19, 1981, approving the settlement, which provides $1.5 million as monetary relief for past discriminatory practices of Sperry Rand, and awards $850,000 in attorneys' fees and costs to class counsel. At the same time, the district court denied attorneys' fees to the named plaintiffs. In a separate order dated August 21, 1981, the court ruled that the interest on the $1.5 million settlement fund should accrue for the benefit of the class members, not Sperry Rand.

On appeal, Elliott and Ambrose contend that the district court abused its discretion in approving the stipulated settlement. Specifically, they argue that the settlement provides inadequate financial relief, fails to correct discriminatory practices, provides inadequate procedures for enforcement, and was negotiated in violation of their rights to due process.

We consider appellants' contention in light of the following standard:

> Our review of the settlement approved by the district court in this case is guided by the principle that:
>
> > Such a determination is committed to the sound discretion of the trial judge. Great weight is accorded his views because he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.

> Act Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 34 (3d Cir. 1971). Only upon a clear showing that the district court abused its discretion will this court intervene to set aside a judicially approved class action settlement. [*Grunin v. International House of Pancakes,* 513 F.2d 114, 123 (8th Cir.), *cert. denied,* 423 U.S. 864 (1975).]

Judge Larson presided over this case from its inception, listened to seven weeks of trial testimony, and reviewed numerous exhibits and depositions. After listening to objections and assessing the strengths and weaknesses of plaintiffs' case, he concluded that the settlement reached was fair, reasonable, and adequate. Appellants have not clearly demonstrated that the district court abused its discretion in approving this settlement.

Elliott and Ambrose also object to the award of attorneys' fees, costs, and expenses to the law firm of Hvass, Weisman and King (the Hvass firm). Elliott and Ambrose claim that an award to the Hvass firm is unwarranted because that firm had withdrawn as class counsel because of a potential conflict of interest and later came back into the suit without notice to, or authorization by, the named plaintiffs.

Elliott and Ambrose, however, cite no authority for their argument that a law firm, which withdraws and later reenters a class action, may not recover its costs, expenses, and fees. Nor do they assert that the Hvass firm's participation as counsel for the class represented an actual conflict of interest, or that the amount of the fees awarded was unreasonable. On the record presented, we cannot say that the district court abused its discretion in award-

ing the attorneys' fees for which the stipulated settlement provided.

We disagree, however, with the court's order denying attorneys' fees to the named plaintiffs. At oral argument, counsel for the class plaintiffs acknowledged that the named plaintiffs required separate representation because their interests had diverged from those of the class. By their participation at the settlement hearing, the named plaintiffs contributed to the adversarial nature of the proceedings, *see Frankenstein v. McCrory Corporation*, 425 F. Supp. 762, 767 (S.D.N.Y. 1977), and provided representation for a significant group of objectors. Moreover, these individuals are not simply dissenters, but the plaintiffs who initially brought this action. Accordingly, they deserve some compensation for their attorneys' fees. This compensation, however, must come out of the fund ($850,000) set aside for attorneys' fees by the stipulated settlement. On remand, the district court in its discretion shall determine an appropriate award of attorneys' fees for the named plaintiffs taking into consideration time spent and other relevant matters, including the value of those services in proceedings leading to approval of the settlement.

Finally, Sperry Rand argues that the district court incorrectly awarded the interest accruing on the $1.5 million settlement fund to the class members. After approving the settlement, the district court determined that this money no longer belonged to Sperry Rand. The court reasoned that if the distribution of funds had not been delayed by this appeal, the individual class members would have been in a position to invest the money and claim the interest. We agree with this reasoning and accordingly affirm the

court's order awarding the interest from the settlement fund to the class members. *Cf. Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 155, 162 (1980) (interest on interpleaded fund allocated to those who ultimately own the principal).

In sum, we affirm the orders of the district court approving the settlement and awarding interest on the settlement fund to the class members, but reverse the order denying attorneys' fees to the named plaintiffs. We remand the case to the district court for a prompt determination of the amount due the named plaintiffs for attorneys' fees, which will be awarded out of the fund set aside for the attorneys' fees of the class.

A TRUE COPY.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

Appendix E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, et al

Plaintiff,

vs.

Sperry Rand Corporation, et al

Defendant.

No. 4-74 Civil 627

Clerk's Notice under Rule 77 (d) F. R. Civil Procedure
or
Rule 49 (c) F. R. Criminal Procedure

You are hereby notified that in the above-entitled cause, on the 3rd day of August, 1982 we filed Judge Larson's Order that Judgment will be entered for named plaintiffs Delores Elliott and Helen Ambrose in the amount of $20,-000.00 for attorneys' fees and in the amount of $601.77 for costs, said sums to be paid by the law firms of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan and Hvass, Weisman & King from the fund of $500,000.00 awarded to the two law firms as part of the overall settlement and we entered judgment accordingly.

ROBERT E. HESS, CLERK
By: _____
Deputy Clerk

Meagher, Geer Law Firm
J. Richard Bland & Bradley M. Jones
2250 IDS Center
Minneapolis, MN 55402

Hvass, Weisman & King
Richard A. Williams, Jr.
715 Cargill Bldg.
Minneapolis, MN 55402

Donna L. Roback & Judith M. Wolf
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all other persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

---

ORDER

No. 4-74-Civ. 627

This Court in September and October 1980 heard the plaintiffs' sex discrimination case. The trial was adjourned to January 1981 for presentation of the defendants' defense. Defendants' part of the case would have required another two to four weeks of trial time with substantial additional expense to the litigants. The trial in September 1980 was preceded by much discovery, many motions and hearings, and an earlier appeal to the Court of Appeals relating to this Court's certification of a class.

After October 1980 counsel for the named and class plaintiffs and counsel for Sperry Rand entered into settlement negotiations. The resumption of the trial scheduled for January 1981 was continued pending further settlement discussion. Named plaintiffs Elliott and Ambrose became

dissatisfied with the course of the negotiations and retained separate counsel—Donna L. Roback and Judith M. Wolf—in April 1981. In May 1981 class counsel and counsel for defendants submitted a stipulated settlement for Court approval. The settlement agreement provided for the payment by Sperry Rand of 1.5 million dollars, together with injunctive relief which had substantial value but which is difficult to measure in dollars. Sperry Rand also agreed to pay $500,000.00 in attorneys' fees to class counsel and agreed to reimburse class counsel for $350,000.00 advanced by class counsel in large part for expert witness services and fees.

In July 1981 this Court held a hearing on the fairness, adequacy and reasonableness of the settlement and in August 1981 entered its Order of approval of the settlement. In a separate hearing this Court approved the fees and reimbursement of expenses for class counsel.

The Court of Appeals on June 23, 1982, affirmed this Court's Orders approving the settlement and awarding interest on the settlement fund to the class members but reversed the Order denying attorneys' fees to the named plaintiffs and ordered that the attorneys' fees to named plaintiffs be paid from the funds set aside for the attorneys' fees for the class.

The Court of Appeals in its Opinion stated that counsel for the named plaintiffs by their participation at the settlement hearing contributed to the adversarial nature of the proceedings and provided representation for a significant number of objectors. This Court was directed in its discretion to determine an appropriate award of attorneys' fees for the named plaintiffs, taking into consideration time spent and other relevant matters, including the value

of those services in proceedings leading to approval of the settlement.

Counsel for named plaintiffs have petitioned the Court for an award of $11,460.00 for 191 hours at $60.00 an hour for services prior to this Court's decision on August 11, 1981, approving the settlement, together with costs of $93.98, and for an award of $14,454.00 for 240.9 hours at $60.00 an hour for services after August 11, 1981, for the appeal and the preparation of the fee petition and hearing, plus costs of $507.79 incurred after August 11, 1981. The preparation of the fee petition and the hearing required 20 hours of time. Counsel for named plaintiffs have also asked for a multiplier of .5 to be applied to the fees in the amount of $12,957.00. The total fee request is therefore $38,871.00. Named plaintiffs' counsel describes the multiplier as a bonus incentive fee award.

Counsel for the named plaintiffs have filed a detailed statement of hours and expenses. Attorney Roback is a 1979 graduate of the University of Minnesota Law School and Attorney Wolf is a 1980 graduage of the same Law School. Both have been in private practice since admission to the Bar, and prior to April 1981 appear to have had some experience in the area of employment discrimination.

Counsel for named plaintiffs have collected an unknown amount of money from the objectors. They have stated that this money would be returned to the objectors.

Counsel for the class are the law firms of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan and Hvass, Weisman & King. The have specified objections to the proposed named plaintiffs' claims. They state that the Court of Appeals provided for the value of services in leading to the approval to the settlement and this means

the services prior to the August 11, 1981 Order of this Court. The settlement, however, was not final until affirmed by the Court of Appeals. Named plaintiffs did not ask the Court of Appeals for attorneys' fees for services on the appeal. This Court assumes that the Court of Appeals left it to this Court to determine the amount of fees for all services, including the appeal and preparation of the fee petition.

Class counsel object to the bonus incentive of 50% and to certain hours for claimed services and the hourly rate of $60.00. The Court of Appeals for this Circuit has approved the decision in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974), and the various factors to be taken into consideration.

The factors to be considered in *Johnson* are:

1. Time and labor. The hours and rates have been previously noted.

2. The novelty and difficulty of the issues presented. The issues were not particularly novel or difficult.

3. Requisite skill. Named plaintiffs' counsel had previous experience in the area of employment discrimination.

4. Preclusion of other legal work. Not a factor.

5. Customary fees. The claimed hourly fee may be excessive but possibly can be justified.

6. Contingency fee. Unknown. Named plaintiffs' counsel had collected money from objectors in an unknown amount which is to be returned to the objectors.

7. Time limitations. None were apparent.

8. Amount involved and recovery obtained. This Court approved the settlement negotiated by class counsel and the Court of Appeals affirmed. The amount was substantial but the named plaintiffs did not effect the settlement. In *Brown v. Bathke,* 588 F.2d 634 (8th Cir. 1978), the Court of Appeals stated that the District Court may consider, as one factor, the relief which named plaintiffs obtained in the case as a whole, citing *Johnson.* The plaintiffs obtained no relief except for a remand for a determination of their attorneys' fees. They did, however, present the claims of the 790 objectors, of whom 30 testified. As suggested by counsel, they made possible what can be described as a "due process" hearing.

9. The experience and reputation of the attorneys. This has been referred to previously.

10. Undesirability of the case. The undertaking was likely undesirable in view of extensive pretrial and trial and negotiations and this Court's likely approval of a settlement negotiated by competent counsel over an extended period of time.

11. Nature of plaintiffs and client relationship. Appears not to be applicable.

12. Awards in similar cases. This Court has had previous experience in determining fees in class action cases, but has had no experience in a matter comparable to the problem presented here.

This Court has not detailed the objections of class counsel which are directed to specific items of services and hours detailed in named plaintiffs' counsel's affidavits. Some objections appear to have merit. Class counsel state that fees of only $3,510.00 prior to August 11, 1981, and $5,097.00 after August 1981 can be supported or justified.

The Court believes that no "lodestar" bonus for contingency, ability or incentive or otherwise has been substantiated or can be reasonably justified.

In view of the limited success as noted by this Court and the Court of Appeals, this Court believes that an award of $20,000.00 to named plaintiffs is fair and reasonable. This award includes all claims for attorneys' fees in this case. There may be several minor problems yet to be resolved, but counsel for the class and counsel for Sperry Rand can work these out. A further hearing may be necessary. Sperry Rand will bear the burden of resolving these problems.

Judgment will be entered for named plaintiffs Delores Elliott and Helen Ambrose in the amount of $20,000.00 for attorneys' fees and in the amount of $601.77 for costs, said sums to be paid by the law firms of Meagher, Geer, Markham, Anderson, Adamson, Flaskamp & Brennan and Hvass, Weisman & King from the fund of $500,000.00 awarded to the two law firms as part of the overall settlement.

August 3, 1982.

/s/ Earl R. Larson
United States Senior District Judge

Appendix F

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

STIPULATION
4-74 Civ. 627

The parties hereto, through their respective counsel, hereby stipulate and agree as follows:

1. Pursuant to the Settlement Agreement executed by the parties and approved by the Court, the attached list of Class members eligible to receive distributions and the amount each should receive has been compiled; and

2. Class members have been afforded an opportunity to review and correct that portion of the list which included their names, current addresses, dates of employment and entitlement to points under the formula set forth in the Settlement Agreement; and,

3. The parties, through their respective counsel, have examined the attached list of class members eligible to receive disbursements from the class action settlement fund which, upon October 1, 1982, will equal ONE MILLION SEVEN HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED NINETY-SEVEN AND 15/100 ($1,756,-497.15) DOLLARS; and

4. The parties, through their respective counsel, have reviewed the underlying documentation and have agreed to the resolution of various questions concerning the eligibility of certain individual class members; and therefore,

IT IS HEREBY STIPULATED and agreed that the Court may issue an Order approving distribution of the settlement funds to Class members identified on the attached list, and in the amounts specified thereon, as full and complete satisfaction of the payment required under the Settlement Agreement.

Dated: September 28, 1982.

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and
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

ORDER
4-74 Civ. 627

WHEREAS, as a condition of settlement of this case, defendant Sperry has agreed to pay to identified Class members an amount computed in accordance with a formula contained in the Settlement Agreement approved by the Court; and

WHEREAS, the parties, through their counsel, have stipulated that the list supplied to the Court contains the names of those Class members that can be determined to be eligible to receive a payment, and the amount of that payment; and,

WHEREAS, as of October 1, 1982, the settlement fund to be distributed will equal ONE MILLION SEVEN HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED NINETY-SEVEN AND 15/100 ($1,756,497.15);

IT IS HEREBY ORDERED:

That the payments to Class members set forth on the class list supplied to the Court are hereby approved to be made as compliance with previous order of the Court.

Dated: September 28, 1982.

/s/ Earl R. Larson
Senior District Court Judge

Appendix G

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

ORDER
4-74-Civil-627

Defendant Sperry Rand Corporation (Sperry) has moved for an Order for Judgment dismissing the action as to all parties and discharging the parties from the supervisory jurisdiction of this Court.

The Court held 3 hearings in December 1983 and since then has considered various affidavits, letters and memoranda which have been submitted to the Court.

On August 11, 1981 the Court entered an Order approving the Stipulation of Settlement which had been entered into by the parties on May 20, 1981. The Court also determined that the Settlement was fair, adequate and

reasonable. The Court of Appeals on June 23, 1982 affirmed this Court's determination.

The Court finds that the parties have complied with the Stipulation and this Court's Orders. Sperry has paid the class members $1,762,618.47. The sum of $1,794.67 remains unclaimed in the settlement fund. Sperry has also complied with the Court's Order relating to the payment of attorneys fees and costs to class counsel. In addition Sperry and the Local Union have modified the collective bargaining agreement as agreed to. Sperry has furnished to the Court the Hays studies, has established appropriate jobs in Plating and Electro-Mechanical areas for assemblers, has established selection criteria for first line supervisors, has encouraged employees to avail themselves of its tuition reimbursement program and has provided notice to employees of the criteria for promotion to various jobs.

IT IS HEREBY ORDERED THAT:

1. The action is dismissed in all its counts and claims as to all parties with prejudice.

2. Class members are barred and enjoined from prosecuting any other action involving the claims of the class action complaint and defendants are barred and enjoined from prosecuting any action against a class member arising from a claim embraced in the class complaint or for defense costs or fees.

3. The parties be discharged from the supervisory jurisdiction of this Court arising from the previous Orders of this Court, the Stipulation of Settlement and the power granted to the Court by Rule 23 relating to class actions.

4. Sperry pay to 5 employees or former class members employees—Axtell, Turnipseed, Alice Olson, Silva and Julia F. Turner—the amounts due them upon proof of membership in the class and their entitlement to payment.

5. Sperry within 10 days pay the sum of $1,794.67 into the Clerk's registry fund. The list of 22 class members and the amounts due them is Attachment 1 to the Achterhof Affidavit (Clerk's Folder IX-1). Sperry will within 15 days file with the Clerk a supplemental list which will include first names, the most recent address and any other identifying information. Payment to the class members will be made by the Clerk upon the submission of a claim and proper proof. After 5 years the Clerk will remit the balance remaining in the fund to the Treasurer of the United States.

Let Judgment be Entered Accordingly.

May 31, 1984.

Separate Memorandum Filed

/s/ Earl R. Larson
United States Senior District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs.

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

ORDER
4-74-Civil-627

Helen M. Ambrose as Pro Se Plaintiff filed a motion on January 3, 1984 to Invalidate Settlement and to Stay Order for Judgment. The motion also requests the Court to set aside previous findings, opinions and judgments, to permit further discovery, and for a new trial on all issues at trial and in settlement. The motion suggests an actual conflict of interest held by the Hvass law firm which acted as co-counsel for the plaintiff class.

The Court has considered the motion, affidavit, memoranda and letters, and the claims and arguments of the parties.

The Court refers the parties and counsel to the separate Memorandum to be filed.

IT IS ORDERED:

That the motion be denied.

May 31, 1984

/s/ Earl R. Larson
United States Senior District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

4-74-Civil-527
MEMORANDUM

Defendant Sperry Rand (Sperry) filed a motion on November 29, 1983 for an Order dismissing this action with prejudice, and discharging the parties from jurisdiction on the ground that defendants have fully complied with the terms of the Stipulation of Settlement approved by this Court on August 11, 1981.

The Court heard evidence submitted by the class plaintiffs for almost seven weeks in September and October of 1980. The Court granted defendants motion to continue the trial to January 1981. After the recess in October 1980 the parties and their counsel began serious discussions about a possible settlement and on May 20, 1981 a Stipulation of Settlement was entered into. The settlement was agreed to by counsel for the class, the Meagher, et al and the Hvass, et al firms, and counsel for the 3 defendants, including Sperry, the International Union and the Local Union.

The case has had an extended history. The complaint was filed in late 1974 and extensive discovery followed.

On May 27, 1976 this Court conditionally certified the Title VII claim for class action status under Rule 23 (b) (2).

Sperry challenged the Court's finding in a mandamus petition, claiming that the named plaintiffs would not or could not fairly and adequately represent the class (Rule 23(a) (4)), in effect claiming a violation of due process. Sperry claimed 5 sources of antagonism between the named plaintiffs and the class members.

The Court of Appeals in *Sperry Rand vs. Larson,* 554 2d 868 (1977) denied the petition for a writ of mandamus to compel decertification.

After a later motion by Sperry to decertify the class this Court in *Elliott vs. Sperry Rand,* 79 FRD 580 (1978) again discussed the possible antagonism between the named plaintiffs and the putative class members but decided again to conditionally certify the class.

After notice to the class members the Court held hearings on July 27 and July 30, 1981. The July 27 hearing

was directed to the fairness, adequacy and reasonableness of the settlement. A number of class members objected to the settlement and a number of objectors were heard. The July 30 hearing related to approval of attorneys' fees and the reimbursement to class counsel for costs and expenses. At the July 30 hearing there was objection to the payment of attorneys' fees for the class co-counsel Hvass firm on the ground of a possible conflict of interest. No testimony was offered as to an actual conflict of interest. The explanation provided by attorneys Bland, Williams and Hansing were adequate and satisfactory. The Court finds that there was no actual conflict of interest and no collusion or unethical conduct which affected the trial or the settlement. On August 11, 1981 the Court determined that the settlement was fair, adequate and reasonable and approved class counsels' fees and reimbursement of costs and expenses.

The named plaintiffs objected to the settlement and appealed from the Court's Order approving the settlement as fair, adequate and reasonable. Named plaintiffs also objected to the award of attorneys' fees and expenses to the Hvass firm and to the non-award of attorneys' fees to newly retained counsel for the named plaintiffs.

The Court of Appeals on June 23, 1982, *Elliott v. Sperry Rand*, 680 F.2d 1225, affirmed this Court's approval of the fairness of the settlement. The Court noted the objection to the award of fees and expenses to the Hvass firm on the ground that the Hvass firm had withdrawn as class counsel and then later reappeared as co-class counsel with the Meagher firm. This Court's recollection is that at some point in time during the 7 week

trial attorney Williams of the Hvass firm appeared at the trial and examined witnesses and participated in the settlement negotiations. The Court understands that attorney Hvass participated in the settlement negotiations. This Court does not recall any objection by the named plaintiffs during the trial and thereafter (until December 1983) to participation of the Hvass firm in the trial or the settlement negotiations.

The Court of Appeals also noted at page 1227 that the named plaintiffs did not assert that the participation of the Hvass firm represented an actual conflict of interest or that the amount of the fees awarded was unreasonable.

This Court on September 28, 1982 approved payment of the settlement fund to the class members which on October 1, 1982 totalled $1,756,497.15.

So much for some of the history.

Sperry has supported its motion by affidavits from its chief counsel, David S. Doty, Trudy P. Achterhof (employed by Sperry) and Maggie J. Anderson (employed by the Doty law firm). The Doty affidavit recites various provisions of the Settlement Agreement and this Court's Order and states that there has been compliance. The Achterhof affidavit recites her participation in determining the names of the employees on the class lists and in generating the checks in October 1982 to 3,105 class members in the total amount of $1,762,618.47. In October 1983 she verified a list of 22 checks 18 of which had been returned to Sperry and are in Sperry's possession and 4 of which have not been returned but have not been cashed. The uncashed checks total $1,794.57. The Anderson affidavit recites her efforts and the efforts of other personnel in the law firm in determining the pay out lists.

The Court held hearings on December 6, 12, 27, 1983. Letters, Memoranda, etc., were received through April 4, 1984.

The December 6 hearing was directed primarily to the posting of notices for first line supervisors. Sperry hired 3 males as associate engineers and they may have performed some of the duties of first line supervisors. Sperry claims that there was a misunderstanding in the department. There is also a suggestion of antagonism involving the manager of the department and the Local Union. In any event, it is clear that the misunderstanding has been corrected. If not by now corrected Sperry has agreed to arbitrate the dispute assuming that the dispute still continues.

The December 12, 1983 hearing related in part to the first line supervisor dispute and to that part of the settlement agreement relating to 2 Hay reports. One report was directed to a Job Analysis of Skilled Jobs and the other report was directed to Job Analysis for Bargaining Unit Supervisors. The settlement agreement provided for submission of the 2 reports to the Court only. The 2 reports were given to the Court in compliance with the settlement agreement.

The December 27, 1983 hearing was devoted substantially to comments by the Court, Ms. Ambrose and counsel. Witness Hodder testified and witness Globa testified briefly again.

Ms. Ambrose stated that 5 class members had not been paid. Two of the 5 (Axtell and Turnipseed) received notices but did not respond. Mr. Doty stated that if the 5 were properly members of the class and should receive checks that Sperry would pay them.

There was discussion as to a merger of the move crew and the general laborer class. Mr. Globa's position is that the two have always been one class though at one time there was a 5 cent an hour differential. The Court believes that the settlement agreement and this Court's Order have been complied with.

There was further discussion as to what is a department as opposed to a work center, access to the Hays reports, the relationship of Teamsters Local 970, a small bargaining unit at Sperry, and Local IBEW 2047 (one of the defendants).

If there are continuing problems as to uncertainties or otherwise relating to the settlement agreement they can likely be raised in grievance proceedings, collective bargaining negotiations or proceedings before administrative bodies.

There was suggestion of a conflict of interest involving the Hvass firm. The claimed conflict was not raised in this Court during the extended trial and the settlement negotiations nor in the Court of Appeals. Ms. Ambrose agreed that the claimed conflict of interest had not been raised except for payment of attorneys fees to class counsel which included the Hvass firm.

Following the 3 hearings in December 1983 Ms. Ambrose, one of the 2 named plaintiffs and now a pro se plaintiff, filed a motion on January 3, 1984 to Invalidate the Settlement and to Stay Order for Judgment. The motion states that it is brought pursuant to Rules 58.02, 59.02 and 60.02 and to "exercise" Rule 59.05 and set a hearing date. The motion also asks the Court to "exercise" Rule 6 to set aside previous findings, judgments, to permit further discovery, and new trial on all issues at trial and

in settlement that may reasonably be tainted or damaged by a conflict of interest of the Hvass firm acting as associate counsel for the class plaintiffs. Plaintiff Ambrose filed an affidavit in support of her motion and in that affidavit referred to an earlier affidavit of December 21, 1983.

The Ambrose affidavit of December 21, 1983 relates to the performance of certain kinds of work, her disagreements with counsel and the claimed conflict of interest of the Hvass firm. Attached to her affidavit is extensive documentation consisting of an exchange of letters between named plaintiffs and the Ethics Committee (Committee) of the Hennepin County Bar Association.

The Committee concluded its investigation on December 2. 1982 and decided that there had been no ethical violation and dismissed the complaint. The Committee shortly thereafter forwarded its file and recommendation to the Lawyers Professional Responsibility Board (Board). On March 29, 1982 the Board advised the 2 named plaintiffs that the Board concurred in the recommendation of the Committee that the complaint be dismissed and closed its file.

The Ambrose affidavit of January 3, 1984 refers again to the claimed conflict of interest and the co-mingling of certain work tasks. The Ambrose affidavit of March 16, 1984 refers to a seniority roster in 2 positions and again to job postings for first line supervisory positions. The Ambrose affidavit of March 20, 1984 refers to job information forms. inspection test equipment, job classification and attaches various documents.

The affidavits of attorneys Bland and Jones of the Meagher firm dated February 13, 1984 state that the named plaintiffs were advised of the re-entry of the Hvass

firm through pleadings, correspondence and discussions with named plaintiffs shortly after the re-association occurred.

In summary it appears that defendant Sperry has complied with the settlement agreement and with the Orders of this Court. The Court has referred earlier to the 2 more seriously disputed issues. One relates to the posting of first line supervisory positions. It appears that there was a misunderstanding and that this has been corrected. If not corrected Sperry has agreed to arbitrate any dispute which remains. The second relates to the 2 Hays reports which, pursuant to the settlement agreement were to be provided to the Court. The Local Union and perhaps the named plaintiffs would like access to the reports. The settlement agreement in this respect was complied with. Named plaintiff Ambrose refers to other possible minor problems. As suggested these can and should be resolved in grievance procedures, arbitration or by administrative agencies.

Named plaintiff Ambrose has cited a number of Rules. Basically she wants a new trial because of the claimed conflict of interest. The Court has participated in the various proceedings from the date of the filing of the complaint in 1974 to the present. The Court can find no conflict of interest and agrees with the determination of the Ethics Committee and the Board that the ethics complaint should be dismissed.

Class counsel including the Meagher and Hvass firms did an excellent job. They introduced expert innovative testimony of industrial psychologists and others. Ambrose suggests some minor disagreement with trial strategy. In any trial such hindsight criticism can be expected. The burden and cost of a possible 12 week retrial cannot be justified.

The management problems are considerable. New class counsel would have to be retained. Class members could be asked to return the $1,7000,000 plus paid to them. There is always the possibility that after the presentation of defendants' case that no money judgment would be returned. The injunctive relief which had substantial value to the class might require vacation. The Clerk's files are contained in 11 boxes of exhibits, depositions, transcripts, etc. The boxes are 12 by 12 by 18 inches in size. Successor counsel would have to review all or much of this material.

After 10 years the entire matter should be put to rest.

May 31, 1984.

/s/ Earl R. Larson
United States Senior District Judge

Appendix H

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all of the persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

ORDER
4-74-Civil-627

On May 31, 1984 I filed 2 Orders and a separate Memorandum.

One Order denied the motion of pro se plaintiff Ambrose to Invalidate Settlement, to Stay Order for Judgment and for a New Trial on all issues. The motion was based on a claimed conflict of interest of one of the law firms representing the named plaintiffs and the class.

A second Order granted the motion of defendant Sperry Rand for an Order dismissing the action as to all parties and discharging from further supervisory jurisdiction of the Court. In this Order I reviewed some of the history of

the case and Sperry's compliance and also disposed of several minor matters.

The Memorandum reviewed the history of the litigation and made reference to a claim of possible conflict of interest on the part of the Hvass law firm. I stated that this claim was not raised during the extended trial or the settlement negotiations nor in the Court of Appeals.

On June 8, 1984 Ms. Ambrose filed a Motion for New Trial and Amendment of Judgments and stated that a supporting Memorandum and affidavits would be submitted within 20 days. The additional materials were submitted on July 18, 1984.

I will treat the June 8 motion as a Motion for Reconsideration of the May 31 Orders.

On June 8 Ms. Ambrose also filed a Notice of Appeal and on June 15 a notice to clerk to Transmit and Certify a Designated Record and Settlement of Issues.

I am also in receipt of an exchange of correspondence between Ms. Ambrose and attorneys Roback and Wolf, the latest attorneys to represent Ms. Ambrose.

The last Ambrose letter was received on August 27, 1984. The correspondence relates to a private dispute as to attorneys fees and will not be considered by me.

Though an appeal appears to be pending I will treat the latest motions as Motions for Reconsideration.

I have considered the Motions, Memorandu, Affidavits and Exhibits. No further hearing or argument is needed or would be productive.

Ms. Ambrose charges me with bias and fatigue. I deny the bias but admit the fatigue.

IT IS ORDERED:

1. That the June 8, 1984 Motion for New Trial and Amendment of Judgment be denied.

2. That the Motion for Reconsideration of the 2 May 31, 1984 Orders and Memorandum be denied.

September 10, 1984.

/s/ Earl R. Larson
United States Senior District Judge

Appendix I

United States Court of Appeals
For The Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

March 11, 1985

Ms. Helen M. Ambrose
Mr. James T. Hansing
Mr. Steward C. Loper
Mr. J. Richard Bland
Mr. Frank Dosal, Clerk (Civ 4 74 627)

Mr. David S. Doty
Mr. Hyman Edelman
Mr. Richard A. Williams

Re: 84-5183 Helen Ambrose v. Sperry Rand Corp., et al

Counsel:

Enclosed is a copy of the opinion of this Court filed today in the above case. Judgment in accordance with the opinion is also entered today.

Please consult the appropriate Federal Rules of Appellate Procedure and the Eighth Circuit Rules (15 & 16) for post-opinion procedure, particularly Circuit Rule 16 (d).

Your attention is also directed to Federal Rule of Appellate Procedure 39 and Eighth Circuit Rules 7 (f) and 8 (j). Itemized and verified bills of coast are to be filed with this office with proof of service within 14 days from this date. We would appreciate it if counsel for the prevailing party would promptly forward to us an itemized bill of costs for the reproduction of the authorized number of copies of their briefs. If the prevailing party fails to submit an itemized bill of cost on a timely basis, this of-

fice will assume that the right to recoup costs has been waived. Itemized bills of cost which are not timely filed will not be processed without a special order of the Court. Similarly, objections to requested bills of cost must also be submitted on a timely basis—within 10 days of the bill of costs.

Your prompt attention to this request will be appreciated.

Sincerely,

/s/ Robert D. St. Vrain
Clerk of Court

mm
enc.

United States Court of Appeals
For The Eighth Circuit

Delores Elliott, Helen Ambrose,

Appellant,

Roberta Pettit, and all other persons similarly situated,

v.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of The International Brotherhood,

Appellees.

Appeal from the United States District Court for the District of Minnesota.

No. 84-5183

Submitted: February 12, 1985
Filed: March 11, 1985

Before HEANEY, Circuit Judge, HENLEY, Senior Circuit Judge, and McMILLIAN, Circuit Judge.

PER CURIAM.

This appeal is from a May 31, 1984 order of the district court denying certain post-judgment relief following an approved settlement in a sex discrimination lawsuit brought against Sperry Rand Corporation, the International Brotherhood of Electrical Workers, AFL-CIO, and

the local union. Appellant, Helen Ambrose, is an individual plaintiff who sought by a post-judgment motion and now seeks by this appeal to upset the approved settlement by her attack on the ethics, impartiality, conflict of interests, and fee award of certain counsel members of the Hvass law firm, who represented plaintiffs. The appellees contend the district court properly terminated the action by granting Sperry Rand's motion to dismiss with prejudice, thereby refusing to invalidate the settlement.

The voluminous record shows that the settlement was signed by the parties May 20, 1981, approved by the district court August 11, 1981, and affirmed by decision of this court filed on June 23, 1982. The eight-page memorandum of the district court dated May 31, 1984, which accompanied the appealed order now before this court, shows the district court considered and ruled on the claims of plaintiff-appellant, concluding defendant Sperry Rand had complied with the terms of the stipulated settlement agreement and that plaintiffs' counsel had done an excellent job. The court agreed with the conclusion of the Ethics Committee of the Hennepin County Bar Association and the Lawyers Professional Responsibility Board that the ethics complaint should be dismissed and found no conflict of interests. The district court noted Sperry Rand agreed to arbitrate any disputes which remain and mentioned one dispute over posting of first line supervisory positions and another over access to two reports. The court found the misunderstanding and dispute over those two matters had been resolved and opined that any other disputes could be resolved in grievance procedures, arbitration, or by administrative agencies.

The district court calculated the considerable risks to

plaintiffs of starting the litigation over and concluded, "After 10 years the entire matter should be put to rest."

The standard of review of this approved settlement is whether the district court abused its discretion. *Elliott v. Sperry Rand Corp.*, 680 F.2d 1225 (8th Cir. 1982); *Reynolds v. National Football League*, 584 F.2d 280 (8th Cir. 1978). The thorough May 31, 1984 memorandum shows the district court diligently and carefully considered the attacks on the settlement and plaintiffs' counsel.

We find no indication that the district court abused its discretion. No error of law or fact appearing and it being clear that further expression by us would have no precedential value, the judgment of the district court is affirmed. *See* 8th Cir. R. 14.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

Appendix J

United States Court of Appeals
For The Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

May 13, 1985

Ms. Helen M. Ambrose
3528 27th Avenue South
Minneapolis, MN 55406

Re: No. 84-5183-MN Helen Ambrose vs. Sperry Rand Corp., etc., et al

Dear Ms. Ambrose:

Enclosed is a copy of an order entered by us today at the direction of the court.

Sincerely,

/s/ Michael E. Gans
Chief Deputy

MEG/cgj
Enclosure
cc: Mr. David S. Doty
Mr. James T. Hansing
Mr. Hyman Edelman
Mr. Stewart C. Loper
Mr. Richard A. Williams, Jr.
Mr. J. Richard Bland
Ms. Phyllis Farguharson, Court Reporter
Mr. Frank Dosal, Clerk, U.S. District Court
FOR INFO ONLY:
Honorable Earl R. Larson
(4-74-627)

J-2

United States Court of Appeals
For The Eighth Circuit

Helen Ambrose,

Appellant,

vs.

Sperry Rand Corp., etc., et al,

Appellees.

Appeal from the United States District Court for the District of Minnesota

No. 84-5183-MN

Appellant's motion for reconsideration or to vacate or modify orders and to prevent manifest injustice, having been considered by the court, is denied.

May 13, 1985

Appendix K

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose, and all other persons similarly situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation, the International Brotherhood of Electrical Workers, AFL-CO., and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

STIPULATION OF SETTLEMENT
4-74 Civ. 627

THIS STIPULATION OF SETTLEMENT, entered this 20th day of May, 1981, among the parties to the above entitled action.

WITNESSETH:

WHEREAS, the individually named plaintiffs caused to be filed with the Equal Employment Opportunity Commission charges numbered TMK3-0617 and TPA3-0461 and related state charges, and said plaintiffs thereafter received Notice of Right to Sue letters dated September 12, 1974 and September 3, 1975; and

WHEREAS, the above entitled action was commenced by Delores Elliott and Helen Ambrose ("Named Plain-

tiffs") as a class action ("Class Action") in December, 1974 against the defendants Sperry Rand Corporation ("Univac"), International Brotherhood of Electrical Workers, AFL-CIO ("International") and Local Union No. 2047 of the International Brotherhood of Electrical Workers ("Local"), asserting claims for alleged violations of Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Labor-Management Relations Act, and for breach of contract; and

WHEREAS, the Class Action was certified as such by Order of the Court dated May 27, 1976 and as amended by Order of the Court dated July 12, 1978, defining the class as follows:

> "Those present and future female employees of defendant Univac employed at its plants in and near St. Paul, Minnesota, and who are or will be members of defendants Local and International, up until the date of trial; and those former female employees who were employed by defendant Univac at its plants in and near St. Paul, Minnesota, and who were members of defendants Local and International, on September 4, 1972 and thereafter." (hereafter referred to as "the Class").

WHEREAS, the defendants, and each of them, deny the allegations of the charges filed providing the basis for the Complaint, deny the allegations of the Complaint, deny all liability, and deny that the named plaintiffs or the class are entitled to any recovery; and

WHEREAS, trial in this matter commenced on September 8, 1980, before the Honorable Earl R. Larson and continued through the conclusion of plaintiffs' case on October 24, 1980; and

WHEREAS, Counsel for the Class deem it in the best interests of the Class to settle all and singular claims embraced and alleged in the charges filed with the EEOC and the Class Action Complaint herein on behalf of the Class in the manner and upon the terms and conditions hereinafter set forth, in order to buy universal peace, avoid further expense, inconveniences and distractions of burdensome and protracted litigation, and put to final rest the controversies and claims raised in the Class Action, and deem such settlement desirable and in the best interests of the Class; and

WHEREAS, the Defendants, and each of them, consider it desirable and in the best interests of all concerned to settle the entire Class Action and the controversies and issues which were raised, embraced and alleged in the EEOC charges and the Class Action Complaint herein in order to buy universal peace, avoid further expense, inconveniences and distractions of burdensome and protracted litigation, and put to final rest the controversies and claims raised in the Class Action by Named Plaintiffs on behalf of themselves and on behalf of the Class;

NOW, THEREFORE, in consideration of the mutual convenants and agreements contained herein, the counsel for the Class, Univac, International, and Local, do hereby agree, subject to the approval of the Court, as follows:

1. Univac and the Local agree to amend the current collective bargaining agreement between Univac and the Local so that it incorporates and reflects the following changes:

a. The various subassembler classifications will be eliminated, a new classification called "Assemblers" will be created, and the following progress rate and

wage structure, including current adjustments for wage protection, shall be immediately effective for Assemblers.

Length of Service	Hourly Rate
Start	$6.00
6 months	$6.89

b. The classification of General Laborer will receive the same wage progression as Assemblers set out in (a) above.

c. General Laborers and Assemblers will receive the same promotional and transfer opportunities, except that no person will be considered qualified for promotion to Inspector or Electro-Mechanical Assembler without six months of electronic assembly experience at Univac or elsewhere or trade school training in electronics.

d. Lead persons will be promoted based upon company wide seniority after completion of at least six (6) months in the relevant classification except for Assembler Leads where the experience requirement will be that in the department where the opening exists.

e. The hourly rate for Drilling Machine Operator shall be increased to equal the hourly rate of Production Machine Operator in accordance with this agreement and to settle an outstanding grievance of the Local.

f. Bargaining unit members who are promoted to a position outside the bargaining unit in which position they would be supervising bargaining unit members shall retain seniority accumulated during their

service in the bargaining unit for twenty-four (24) months following the date of their promotion.

g. Bargaining unit members shall be advised whenever an opening occurs in a first-line supervisory position, and notice of such openings shall be placed on all Union bulletin boards and a copy sent to Local 2047.

2. Univac agrees that within six (6) months after approval by the Court of the settlement of this case, it will have completed a job analysis of the following eight classifications: Sheet Metal Worker, Die Setter, Heat Treater Welder, Maintenance Mechanic A, Maintenance Mechanic B, Machine Operator A, General Inspector, and Spray Painter. One of the purposes of this job analysis will be to determine the requisite skill levels required of a person about to enter any one of those eight classifications. The above-described job analysis will be conducted by Hay Associates. Hay Associates will prepare position descriptions for each of those jobs based upon the job analysis, which position descriptions will be used by Univac. Hay Associates will make a report concerning the job analysis and will make recommendations regarding the requisite skill levels of an individual about to enter any one of the above-described classifications. All analyses work undertaken by Hay Associates will be consistent with presently accepted professional job analyses standards of the management consultant community specializing in the area of compensation practices and with current efforts to carry out the intent of EEOC regulations dealing with Equal Employment opportunities. The report and recommendations will be made to the Court, which may, in its discretion, order compliance based on any findings or recommendations made by Hay Associates.

3. Univac agrees that it will establish as Plating Equipment Operator those jobs presently performed by Assemblers operating a piece of plating equipment on the grate, and will establish as Electro Mechanical Assembler those jobs presently performed by Assemblers working in the tear-down and final assembly cabinet area.

4. Univac agrees that within six (6) months after approval by the Court of the settlement of this case, it will have established and make use of selection criteria for promotion of an individual to a position of first-line supervisor. The selection criteria will be determined by Hay Associates. Hay Associates shall make a report to the Court after conducting a job analysis of the first-line supervisory positions, with particular reference made to the requisite skills required of a person entering a first-line supervisory positions. The results of this study shall also be made known to the Union and Univac's employees. Univac will implement the selection criteria set forth by Hay Associates. Univac will determine its affirmative action goal for first-line supervisory promotions based upon the criteria and in accordance with the applicable OFCCP and other government regulations. All analyses work undertaken by Hay Associates will be consistent with presently accepted professional job analyses standards of the management consultant community specializing in the area of compensation practices and with current efforts to carry out the intent of EEOC regulations dealing with Equal Employment opportunities. The report and recommendations will be made to the Court, which may, in its discretion, order compliance based on any findings or recommendations made by Hay Associates.

5. Univac agrees to actively encourage its employees to take advantage of its tuition reimbursement program for obtaining skills necessary for promotion, and will distribute a notice to all bargaining unit employees of the trade school or vocational school courses required, if any, for promotion to any position within the bargaining unit, and the identity and location of facilities in the Twin Cities area where such skills can be obtained. Univac shall also distribute a notice to all of its bargaining unit employees stating that seniority is the only determinative factor in being selected for promotion to any of the bargaining unit positions except for the entry-level positions and the eight jobs set forth in paragraph 2 above. With regard to the eight positions set forth in paragraph 2 above, Univac shall distribute a notice to each employee describing the selection criteria for and the requisite skills required of such positions after the report of Hay Associates has been completed.

6. A settlement fund of $1,500,000.00 will be established by Univac and deposited as soon as possible after the Court approves the settlement of this case into an account bearing the highest possible interest and such funds shall be the sole and exclusive source of funds for payment of settlements to members of the class enlarged as hereinafter provided. No contribution to the settlement fund is required to be made by the International or Local.

7. Persons who were initially within the Court's definition of the Class but exercised their right to opt out of the Class shall be given an opportunity to rejoin the Class by withdrawing their election to opt-out and by affirmatively agreeing to become members of the Class and subject

themselves to the jurisdiction of the Court and the terms and conditions of any Orders regarding settlement and dismissal made by the Court and to receive benefits therefrom. It is agreed by and between the parties that they will request the Court to enter an Order directing that all persons who elected to opt-out be given a Notice in the form of Exhibit I hereto, together with an "Election of Participation" in the form of Exhibit II hereto, which each individual that did opt-out must file not later than twenty (20) days after the date of such Notice in order to withdraw their election to opt-out and rejoin the Class.

8. Settlement payments will be made in accordance with the formula contained in paragraph 9 below to individuals that return to the Clerk of Court a request to receive a settlement payment in the form of Exhibit II of an "Election of Participation" and within the time limits and under the conditions imposed by the Court.

9. The amount of settlement payments to each class member will be based on the following formula:

> Settlement payments will be calculated for each individual requesting such payment by multiplying the amount in the settlement fund ($1,500,000.00) by that individual's settlement factor, which in turn has been determined by dividing that individual's settlement points based upon an individual's years of service:

0 - 1 year	0.5 points
1 - 2 years	1.0 points
2 - 3 years	1.5 points
3 - 4 years	2.0 points
4 - 5 years	3.0 points
5 - 6 years	4.0 points
6 - 7 years	5.0 points
7 - 8 years	6.5 points
8 - 9 years	8.0 points
9 - 10 years	9.5 points
10 - 11 years	11.0 points
11 - 12 years	13.0 points
12 - 13 years	15.0 points
13 - 14 years	17.0 points
14 - 15 years	19.0 points
15 - 16 years	21.0 points
16 and over years	25.0 points

by the total number of settlement points for all individuals returning a request for a settlement payment.

$$\frac{PI}{PT} \times \$1,500,000.00 = \text{Individual Settlement Payment}$$

Years of service will be equal to accumulated service and will be calculated using the date of hire or rehire as the beginning point and the date the Court approves the settlement as the ending point.

Settlement payments for each individual will be made by check issued by Univac within 30 days after the Court has issued its order finally approving the compromise and settlement of the Class Action.

Each class member will be apprised of the range of settlement payments by notification to each class member who has become a participating member of the class in the past or pursuant to the procedures set forth in paragraph 7 above.

10. After the date upon which agreement was reached between the parties hereto as set forth above and as a matter independent of such agreement, Plaintiffs' counsel advised counsel for Defendants that Plaintiffs' counsel deemed it advisable to petition the Court for an Order allowing attorneys' fees, costs and expenses at the same time that this Stipulation of Settlement is submitted to the Court for approval. Counsel for Defendants agreed to this proposal, and thereafter Plaintiffs' counsel advised counsel for Defendants that they would seek attorneys' fees in the amount of $500,000.00 and reimbursement to Plaintiffs and their counsel for costs and expenses in the approximate amount of $350,000.00. Plaintiffs' counsel further advised counsel for Defendants that were they to seek attorneys' fees based strictly upon the amount of time expended at customary hourly rates charged by Plaintiffs' counsel, the total fees sought would be in excess of $603,000.00 more than $103,000.00 in excess of the fees Plaintiffs' counsel intend to seek. All attorneys' fees, costs and expenses incurred by Plaintiffs and Plaintiffs' counsel in the Class Action, in whatever amount the Court ultimately allows, shall be paid out of an attorneys' fees and expense fund separately established by Univac. No contribution to the attorneys' fees and expense fund is required to be made by the Local or International. If the Petition submitted to the Court by Plaintiffs' counsel supports and conforms with the representations made by

Plaintiffs' counsel as set forth above, Defendants and their counsel have advised that they will, if asked by the Court, state that, in their judgment, the petition for allowance of fees, costs and expenses submitted by Plaintiffs and their counsel appears reasonable. All parties hereto acknowledge that the ultimate determination of the question of attorney's fees, costs and expenses is within the sole discretion of the Court, and by agreeing to the provisions of this paragraph the parties hereto do not intend to contract as to the amounts which shall be allowed to Plaintiffs and Plaintiffs' counsel as attorneys' fees, costs and expenses.

11. Costs of any and all notices required to be sent pursuant hereto, and the cost of any other mailings required to be sent pursuant hereto, shall be borne in equal proportions by Univac, the Local and the International. All other costs of administration of this settlement shall be paid by Univac.

12. As a condition of this agreement the Class Members, and each of them, release Univac, the Local, the International, and each of them, jointly and severally, from any and all manner of action or actions, cause or causes of action, suits, debts and sums of money, claims and demands whatsoever, in law or in equity, embraced or alleged in the charges filed with the EEOC related state charges and the Class Action Complaint herein. All settlement checks issued by Univac to Class Members shall bear the following restrictive endorsement:

"RELEASE"

By endorsing and negotiating this instrument the undersigned agrees to be bound by the judgment en-

tered in the matter of Elliott, et al. v. Sperry Corporation, et al., by the United States District Court for the District of Minnesota (Civil Action No. 4-74-627), and the undersigned releases Sperry Corporation, Univac, the International Brotherhood of Electrical Workers, Local Union No. 2047 of the International Brotherhood of Electrical Workers, and the named plaintiffs, and each of them, jointly and severally, from any and all manner of action or actions, cause or causes of action, suits, debts and sums of money, claims and demands whatsoever, in law or in equity, embraced and alleged as described in charges filed with the EEOC, related state charges and the Class Action Complaint herein.

13. Each Defendant agrees to the dismissal, with prejudice, of every Cross-Claim, including Cross-Claims for indemnity and contribution, which it asserted or could have asserted against any other Defendant.

14. As a condition of this agreement, the Named Defendants, and each of them, release all Class Members, and each of their respective heirs, administrators, executors, successors and assigns, from any and all manner of action or actions, cause or causes of action, suits, debts and sums of money, claims and demands whatsoever, in law or in equity, which any or each of them may have or have had, whether known or unknown, contingent or liquidated, arising out of the assertions embraced and alleged in the charges filed with the EEOC and the Class Action Complaint herein or the resulting litigation with regard to defense costs and attorneys' fees, or any other related costs of litigation.

15. It is understood and agreed that this agreement, and the adherence to and compliance with it by the parties, shall be supervised, monitored, and construed exclusively by the Court, and the parties hereto agree to and do request that the Court retain exclusive jurisdiction of this matter until such time as the Court determines that such supervisory jurisdiction is no longer required. During the period of time that the Court retains exclusive jurisdiction of this matter, the non-compliance with this Stipulation of Settlement as determined by the Court shall constitute contempt and the party in contempt shall be subject to any and all sanctions the Court may impose, in its discretion. It is understood and agreed that Univac shall make a report to the Court, no later than December 1, 1981, with copies to counsel for all other parties, detailing the steps which it has taken to comply with the terms and conditions of this agreement. This Stipulation of Settlement shall impose no obligation or responsibility upon the International to monitor, review or investigate the treatment of women under the collective bargaining agreements in effect from time to time between the Local and Univac, or under the provisions of any judgment or decree hereafter to be entered in these proceedings pursuant to this Stipulation.

16. It is agreed and understood that this Stipulation will be submitted to the United States District Court for the District of Minnesota, Fourth Division with the recommendation of the counsel for all parties that this Stipulation and the settlement contemplated hereby are fair. reasonable and adequate and shall request an Order scheduling a prompt hearing to be held at which the Court may determine the fairness, reasonableness and adequacy

of this Stipulation and settlement in accordance with the requirements of Federal Rules of Civil Procedure 23 (e) and in connection therewith:

a. Requiring that notice of hearing substantially in the form attached hereto as Exhibit A shall be given to the Class Members by mail, and

b. Providing that any Class Member who objects to this Stipulation or the judgment to be entered thereon may appear at the hearing and show cause why the settlement proposed in this Stipulation should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, provided that, except by special leave of Court, any such objection must be made in writing and filed with the Court seven (7) days prior to the date of the hearing fixed by the Court in its order for hearing by delivery to:

Clerk of United States District Court
110 South Fourth Street
Minneapolis, Minnesota 55401

Any Class Member who fails to object at the time and in the manner prescribed herein shall be foreclosed forever from raising such objections.

17. If the Court approves the settlement contemplated hereby, an order pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure shall forthwith be entered as follows:

a. Approving the settlement set forth in this Stipulation as fair, reasonable and adequate;

b. Except as provided in paragraphs 15, 17 (d) and 18, dismissing this action in all its counts, and in all respects, and all claims which were embraced or alleged in the charges filed with the EEOC or the Class Action Complaint herein, on the merits, and with prejudice to all Class Members, and in favor of Univac, Local, International as well as past and present officers, directors, employees of Univac, Local and International and each of their respective heirs, administrators, executors, successors and assigns, and without the award of costs to any parties;

c. Forever barring and enjoining prosecution by any Class Member of any and all other actions which in any way or manner involve the claims settled hereby, and any action commenced prior to or after the judgment herein which arises out of or is based upon or connected with any matter, fact or thing alleged in this Class Action against Defendants; and forever barring and enjoining prosecution by any Named Defendants of any and all actions against any Class Member, with regard to any and all claims asserted and alleged against Defendants contained in the charges filed with the EEOC or the Class Action Complaint herein, ot for recovery of defense costs and litigation fees, dues, or any other costs associated with this litigation; and

d. Reserving jurisdiction of this Court with respect to the award of attorneys' fees and expenses as provided in paragraph 18 below and reserving jurisdiction over supervision and enforcement of the agreement as contemplated in paragraph 15: and

e. Determining that there is no just reason for delay of entry of final judgment and expressly directing the entry of final judgment as provided above.

f. Incorporating the terms of the Stipulation of Settlement by reference to said Stipulation.

18. Following the hearing on the fairness, reasonableness, and adequacy of this Stipulation of Settlement, Plaintiffs' counsel may make application to the Court for an award of attorneys' fees and expenses with reference to the Class Action and such application shall be heard at such time and place as the Court shall determine. Univac shall deposit at the time of the approval of the settlement of this Class Action the funds referred to in paragraph 10 in an account bearing the highest available interest, which interest shall be paid to Plaintiffs and Plaintiffs' counsel in addition to the fees and costs set forth in paragraph 10.

19. It is understood and agreed that counsel for Defendants and Plaintiffs' counsel shall joint in a petition to the Court for approval of this settlement.

20. It is understood and agreed that this settlement agreement shall be construed in accordance with the laws of the United States and the State of Minnesota.

IN WITNESS WHEREOF, the parties to the Class Action have caused this Stipulation of Settlement to be signed by their respective counsel.

MEAGHER, GEER, MARKHAM, ANDERSON, ADAMSON, FLASKAMP &BRENNAN
By /s/ J. Richard Bland
J. Richard Bland
Bradley M. Jones
2250 IDS Center
Minneapolis, Minnesota 55402
HVASS, WEISMAN & KING
By /s/ Richard A. Williams, Jr.
Richard A. Williams, Jr.
715 Cargill Building
Minneapolis, Minnesota 55402
Telephone: (612) 333-0201
Attorneys for Plaintiffs
POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
By /s/ David S. Doty
David S. Doty
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4344 IDS Center
Minneapolis, Minnesota 55402
Telephone: (612) 335-9331
Attorneys for Defendant
Sperry Univac

MASLON, EDELMAN, BORMAN, BRAND
& McNULTY
By /s/ William Z. Pentelovitch
By /s/ Hyman Edelman
William Z. Pentelovitch
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1800 Midwest Plaza
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Attorneys for Defendant
International Brotherhood
Electrical Workers, AFL-CIO
JAMES T. HANSING
By /s/ James T. Hansing
1208 Plymouth Building
Telephone: (612) 336-5831
Attorneys for Defendant Local
Union No. 2047, International
Brotherhood of Electrical Workers

EXHIBIT A

PLEASE READ THIS CAREFULLY

YOUR RIGHTS ARE
AFFECTED BY THIS NOTICE

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Delores Elliott, Helen Ambrose and all persons similarily situated,

Plaintiffs,

vs.

Sperry Rand Corporation, a Delaware corporation; the International Brotherhood of Electrical Workers, AFL-CIO, and Local Union No. 2047 of the International Brotherhood of Electrical Workers,

Defendants.

4-74 CIVI L627

TO: ALL PAST AND PRESENT FEMALE EMPLOYEES OF THE LOCAL 2047 BARGAINING UNIT:

IMPORTANT LEGAL NOTICE

As you were previously informed, this lawsuit was brought as a Class Action against Sperry Rand Corporation ("Univac"), the International Brotherhood of Electrical Workers (IBEW), and Local Union No. 2047 of the

IBEW ("Local") alleging that they violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §200e, et seq.

Although defendants deny the allegations of the Complaint and the EEOC charge and further deny any liability to plaintiffs or the members of the Class, in order to buy peace and avoid added expense and annoyance of litigation, an agreement has been reached between defendants and representatives of the Class on a plan to settle this lawsuit. As a Class member, you will receive benefits from this settlement.

Among the most important features of the proposed settlement are the following:

1. A settlement fund of $1,500,000.00 will be established by Univac and such fund shall be the exclusive source of funds for payment of settlements to members of the Class.

2. Persons who were within the Court's definition of the Class, but who subsequently exercised their right to opt out of the Class, shall be given an opportunity to rejoin the Class in order to participate in the settlement.

3. Settlement payments will be calculated for you by multiplying the amount in the settlement fund ($1,500,000.00) by your "settlement factor." Your "settlement factor" will be determined by dividing your "settlement points" by the total number of settlement points for all Class members. Your "settlement points" will be allocated based upon years of service to Univac as follows:

0 - 1 year	.5 points
1 - 2 years	1.0 points
2 - 3 years	1.5 points
3 - 4 years	2.0 points
4 - 5 years	3.0 points
5 - 6 years	4.0 points
6 - 7 years	5.0 points
7 - 8 years	6.5 points
8 - 9 years	8.0 points
9 - 10 years	9.5 points
10 - 11 years	11.0 points
11 - 12 years	13.0 points
12 - 13 years	15.0 points
13 - 14 years	17.0 points
14 - 15 years	19.0 points
15 - 16 years	21.0 points
16 and over years	25.0 points

The formula, therefore, is:

$$\frac{\text{Your Settlement Points} \times \$1{,}500{,}000.00}{\text{Total Number of Settlement Points}} = \text{Your Settlement Payment}$$

Years of service will be equal to accumulated service calculated using the date of hire or rehire as a beginning point and the date the Court approves the settlement as an ending point.

4. Settlement payments will be made to you by a check issued by Univac within 30 days of the Court's Order approving this settlement. If all persons within the definition of the Class participate in this settlement, a person with less than one year of service to Univac would receive a

settlement payment of approximately $35.00 and a person with over sixteen years of service would receive a settlement payment of approximately $1,750.00.

5. Univac and the Local have agreed to amend the current collective bargaining agreement between them so that it incorporates and reflects the following changes:

a. The various subassembler classifications will be eliminated, a new classification called "Assemblers" will be created, and the following progress rate and wage structure, including current adjustments for wage protection, shall be immediately effective for Assemblers.

Length of Service	Hourly Rate
Start	$6.00
6 months	$6.89

b. The classification of General Laborer will receive the same wage progression as Assemblers set out in (a) above.

c. General Laborers and Assemblers will receive the same promotional and transfer opportunities, except that no person will be considered qualified for promotion to Inspector or Electro-Mechanical Assembler without six months of electronic assembly experience at Univac or elsewhere or trade school training in electronics.

d. Lead persons will be promoted based upon company wide seniority after completion of at least six (6) months in the relevant classification except for Assembler Leads where the experience requirement will be that in the department where the opening exists.

e. The hourly rate for Drilling Machine Operator shall

be increased to equal the hourly rate of Production Machine Operator in accordance with this agreement and to settle an outstanding grievance of the Local.

f. Bargaining unit members who are promoted to a position outside the bargaining unit in which position they would be supervising bargaining unit members shall retain seniority accumulated during their service in the bargaining unit for twenty-four (24) months following the date of their promotion.

g. Bargaining unit members shall be advised whenever an opening occurs in a first-line supervisory position, and notice of such openings shall be placed on all Union bulletin boards and a copy sent to Local 2047.

6. Univac agrees that within six (6) months after approval by the Court of the settlement of this case, it will have completed a job analysis of the following eight classifications: Sheet Metal Worker, Die Setter, Heat Treater Welder, Maintenance Mechanic A, Maintenance Mechanic B, Machine Operator A, General Inspector, and Spray Painter. One of the purposes of this job analysis will be to determine the requisite skill levels required of a person about to enter any one of those eight classifications.

7. Univac agrees that it will establish as Plating Equipment Operator those jobs presently performed by Assemblers operating a piece of plating equipment on the grate, and will establish as Electro Mechanical Assembler those jobs presently performed by Assemblers working in the tear-down and final assembly cabinet area.

8. Univac agrees that within six (6) months after approval by the Court of the settlement of this case, it will

have established and make use of selection criteria for promotion of an individual to a position of first-line supervisor.

9. Univac agrees to actively encourage its employees to take advantage of its tuition reimbursement program for obtaining skills necessary for promotion. Univac shall also distribute a notice to all of its bargaining unit employees stating that seniority is the only determinative factor in being selected for promotion to any of the bargaining unit positions except for the entry-level positions and the eight jobs set forth in paragraph 6 above.

10. Persons who were initially within the Court's definition of the Class but exercised their right to opt out of the Class shall be given an opportunity to rejoin the Class by withdrawing their election to opt out and by affirmatively agreeing to become members of the Class and subject themselves to the jurisdiction of the Court and the terms and conditions of any Orders regarding settlement and dismissal made by the Court and to receive benefits therefrom.

11. A separate fund has been established in addition to the $1,500,000.00 settlement fund for the payment of plaintiffs' expenses and attorneys' fees, and if approved by the Court, expenses in an amount up to $350,000.00 and attorneys' fees in an amount up to $500,000.00 might be paid by Univac.

12. Costs of any and all notices required to be sent pursuant hereto, and the cost of any other mailings required to be sent pursuant hereto, shall be borne in equal proportions by Univac, the Local and the International.

All other costs of administration of this settlement shall be paid by Univac.

A copy of the Stipulation of Settlement and other papers relating to this lawsuit are on file with the Clerk of the United States District Court, 110 South Fourth Street, Minneapolis, Minnesota. You may inspect these documents at the Clerk's office between 8:30 a.m. and 5.00 p.m., Monday through Friday.

The Court must approve this settlement. The Court has scheduled a hearing to be held on ———, 19——, at ———— at the United States Courthouse in Minneapolis to determine whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court.

You are entitled to object to all or any part of the settlement and to have your objection ruled upon by the Court. IF YOU WISH TO OBJECT TO THE APPROVAL OF THIS SETTLEMENT, YOU MAY APPEAR AT THE HEARING AND SHOW CAUSE, IF ANY, AS TO WHY THE SETTLEMENT SHOULD NOT BE APPROVED AS FAIR, REASONABLE, AND ADEQUATE AND WHY THIS ACTION SHOULD NOT BE DISMISSED ON THE MERITS AND WITH PREJUDICE AS TO DEFENDANTS.

If you wish to object to the settlement, your objection must be submitted in writing to the Court no later than ———, 19——. Your objection should be mailed to:

Clerk of United States District Court
110 South Fourth Street
Minneapolis, Minnesota 55401

with copies mailed to:

J. Richard Bland, Esq.
Bradley M. Jones, Esq.
2250 IDS Center
Minneapolis, Minnesota 55402

David S. Doty, Esq.
Sally A. Johnson, Esq.
4344 IDS Center
Minneapolis, Minnesota 55402

Hyman Edelman, Esq.
William Z. Pentelovitch
1800 Midwest Plaza
Minneapolis, Minnesota 55402

James T. Hansing, Esq.
1208 Plymouth Building
Minneapolis, Minnesota 55402

You may consult and retain your own legal counsel if you desire. You may also address questions to:

J. Richard Bland, Esq.
2250 IDS Center
Minneapolis, Minnesota 55402
Telephone: (612) 338-0661

If you fail to object in the manner prescribed herein, you will have waived your objection, you will be bound

by the Court's determination, and you will be foreclosed forever from raising an objection without special permission of the Court.

In the event that the hearing on this settlement does not resolve all questions or objections on ———, 19——, the Court may order further proceedings to be held. No further notice will be sent to you regarding any such continuations of the hearing or related proceedings unless ordered by the Court.

Dated: ————————

BY THE COURT

Earl R. Larson
United States District Court Judge

EXHIBIT I

REQUEST TO REJOIN CLASS

IMPORTANT

If you requested exclusion from the class ("opted out") your rights are affected by this form.

I, ————————, having a Sperry clock number of ————————, initially decided to remove myself from the class ("opted out") and now wish to withdraw the election to "opt out" and rejoin the class, thereby becoming eligible to accept the benefits and cash settlement offered to class members by executing an "Election of Participation" and agreeing to subject myself to the jurisdiction of the Court and the terms and conditions of and orders regarding settlement and dismissal made by the Court. I

have read the notice provided to me and understand its effect, now agreeing to become a class member.

Date————————

Signature

This Request must be received in P. O. Box No. 9767, Minneapolis, Minnesota, 55440, and postmarked no later than ———, 1981 to be considered.

EXHIBIT II

ELECTION OF PARTICIPATION

IMPORTANT

All class members and persons initially requesting exclusion from the class and filing a request to rejoin the class must return this form to receive a settlement check.

REQUEST FOR SETTLEMENT PAYMENT

I, ———, having a Sperry Univac clock number of ————————, hereby request that I be paid an amount in settlement of this action as computed using the agreed upon formula. I understand that by requesting and accepting this settlement I hereby release forever the defendants from any and all claims made in the Class Action Complaint based upon the EEOC charges number TMK3-0617 and TPA3-0461 and the acts or failures to act by defendants providing the basis for this suit. I also

understand that I will be bound by the judgment entered by the Court.

Date————————

_____

Signature

This Request must be received in P. O. Box No. 9767, Minneapolis, Minnesota, 55440, and postmarked no later than ———, 1981 to be considered.